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STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE

1991 GENERAL ASSEMBLY

AT ITS

REGULAR SESSION 1991

BEGINNING ON

WEDNESDAY, THE THIRTIETH DAY OF JANUARY, A.D. 1991

HELD IN THE CITY OF RALEIGH

**ISSUED BY
SECRETARY OF STATE RUFUS L. EDMISTEN**

PUBLISHED BY AUTHORITY

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SESSION LAWS
OF THE
STATE OF NORTH CAROLINA

REGULAR SESSION 1991

H.B. 738

CHAPTER 615

AN ACT TO AUTHORIZE THE CITY OF WILMINGTON TO IMPOSE CONDITIONS AND RESTRICTIONS ON THE SALE OF PROPERTY AND TO MAKE TECHNICAL CORRECTIONS TO THE CHARTER AND IN PENDER COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 495 of the 1977 Session Laws, being the Charter of the City of Wilmington, is amended by adding a new section to read:

"Sec. 13.8. *Conditions and Restrictions on the Sale of Property.* The City of Wilmington may make any sale, exchange, or transfer of property pursuant to G.S. 160A-268, 160A-269, 160A-270, or 160A-271 subject to such covenants, conditions, and restrictions as the City Council may deem to be in the public interest."

Sec. 2. Section 1 of Chapter 119 of the 1991 Session Laws is amended by deleting "Sec. 23.10." and by substituting "Sec. 23.11." This act applies only to the City of Wilmington.

Sec. 3. G.S. 153A-15(c) reads as rewritten:

"(c) This ~~act~~ section applies to Anson, Ashe, Bertie, Bladen, Brunswick, Burke, Buncombe, Caldwell, Caswell, Cleveland, Columbus, Davidson, Davie, Forsyth, Franklin, Granville, Harnett, Haywood, Henderson, Jackson, Johnston, Lee, Madison, Martin, Montgomery, ~~Pender~~, Person, Rockingham, Rowan, Sampson, Stokes, Swain, Transylvania, Union, Vance, Warren, and Wilkes Counties only."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.B. 740

CHAPTER 616

AN ACT PERMITTING THE BOARD OF TRUSTEES OF BRUNSWICK COMMUNITY COLLEGE TO GRANT SECURITY INTERESTS TO FEDERAL AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 907 of the 1987 Session Laws reads as rewritten:

"Sec. 2. This act applies only to Haywood Community College and College, Roanoke-Chowan Community College, College, and Brunswick Community College."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.B. 825

CHAPTER 617

AN ACT TO MAKE AMENDMENTS TO THE DURHAM CITY CHARTER RELATING TO THE CITY MANAGER.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended by Chapter 694 of the 1981 Session Laws, is amended by rewriting the last paragraph of Section 17 to read:

"The City Council may authorize the City Manager to make, approve, award, and execute any contract for the purchase of apparatus, supplies, materials, or equipment and any contract for construction or repair work provided:

- (1) The amount of the contract shall not exceed fifty thousand dollars (\$50,000);
- (2) The City Manager shall, within 45 days of the award of such contract, report such award to the City Council, provided however, contracts in an amount less than an amount prescribed by the City Council need not be reported;
- (3) The City Manager shall comply with all applicable provisions of Article 8 of Chapter 143 of the General Statutes, and of Section 84 of this Charter. The City Manager may take any action that the City Council is required or authorized to take under Article 8 of the Chapter 143 of the General Statutes in making, approving, awarding, or executing such contracts."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.B. 933

CHAPTER 618

AN ACT TO REPEAL THE SALES TAX EXEMPTION FOR PRISON CONCESSION SALES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.13(19) is repealed.

Sec. 2. This act becomes effective August 1, 1991, and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.B. 1013

CHAPTER 619

AN ACT TO DEFINE THE LIMITS OF LOCAL GOVERNMENT EMPLOYEES' POLITICAL ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 153A of the General Statutes is amended by adding a new section to read:

" § 153A-99. County employee political activity.

(a) Purpose. The purpose of this section is to ensure that county employees are not subjected to political or partisan coercion while performing their job duties, and to ensure that public funds are not used for political or partisan activities.

It is not the purpose of this section to allow infringement upon the rights of employees to engage in free speech and free association. Every county employee has a civic responsibility to support good government by every available means and in every appropriate manner. Employees are not restricted from affiliating with civic organizations of a partisan or political nature, nor are employees, while off duty, restricted from attending political meetings, or advocating and supporting the principles or policies of civic or political organizations, or supporting partisan or nonpartisan candidates of their choice in accordance with the Constitution and laws of the State and the Constitution and laws of the United States of America.

(b) Definitions. For the purposes of this section:

- (1) 'County employee' or 'employee' means any person employed by a county or any department or program thereof that is supported, in whole or in part, by county funds;
- (2) 'On duty' means that time period when an employee is engaged in the duties of his or her employment; and
- (3) 'Workplace' means any place where an employee engages in his or her job duties.

(c) No employee while on duty or in the workplace may:

- (1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for political office; or
- (2) Coerce, solicit, or compel contributions for political or partisan purposes by another employee.

(d) No employee may be required as a duty or condition of employment, promotion, or tenure of office to contribute funds for political or partisan purposes.

(e) No employee may use county funds, supplies, or equipment for partisan purposes, or for political purposes except where such political uses are otherwise permitted by law.

(f) Nothing in this section shall be construed to prohibit a county from adopting or enforcing personnel policies not in conflict with the rights of employees under the Constitution and laws of the State or the Constitution and laws of the United States of America."

Sec. 2. Chapter 160A is amended by adding a new section to read:

" § 160A-99. City employee political activity.

(a) Purpose. The purpose of this section is to ensure that city employees are not subjected to political or partisan coercion while performing their job duties, and to ensure that public funds are not used for political or partisan activities.

It is not the purpose of this section to allow infringement upon the rights of employees to engage in free speech and free association. Every city employee has a civic responsibility to support good government by every available means and in every appropriate manner. Employees are not restricted from affiliating with civic organizations of a partisan or political nature, nor are employees, while off duty, restricted from attending political meetings, or advocating and supporting the principles or policies of civic or political organizations, or supporting partisan or nonpartisan candidates of their choice in accordance with the Constitution and laws of the State and the Constitution and laws of the United States of America.

(b) Definitions. For the purposes of this section:

- (1) 'City employee' or 'employee' means any person employed by a city or any department or program thereof that is supported, in whole or in part, by city funds;
- (2) 'On duty' means that time period when an employee is engaged in the duties of his or her employment; and
- (3) 'Workplace' means any place where an employee engages in his or her job duties.

(c) No employee while on duty or in the workplace may:

- (1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for political office; or
- (2) Coerce, solicit, or compel contributions for political or partisan purposes by another employee.

(d) No employee may be required as a duty or condition of employment, promotion, or tenure of office to contribute funds for political or partisan purposes.

(e) No employee may use city funds, supplies, or equipment for partisan purposes, or for political purposes except where such political uses are otherwise permitted by law.

(f) Nothing in this section shall be construed to prohibit a city from adopting or enforcing personnel policies not in conflict with the rights of employees under the Constitution and laws of the State or the Constitution and laws of the United States of America."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.B. 1027

CHAPTER 620

AN ACT TO PROVIDE THAT PAYMENT OF A CONTRACTOR OR SUBCONTRACTOR IS NOT A CONDITION PRECEDENT FOR PAYMENT TO ANY SUBCONTRACTOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 22C-2 reads as rewritten:

" § 22C-2. *Performance by subcontractor.*

Performance by a subcontractor in accordance with the provisions of its contract shall entitle it to payment from the party with whom it contracts. Payment by the owner to a contractor is not a condition precedent for payment to a subcontractor and payment by a contractor to a subcontractor is not a condition precedent for payment to any other subcontractor, and an agreement to the contrary is unenforceable."

Sec. 2. This act is effective upon ratification and applies to those contracts entered into on or after ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.B. 1109

CHAPTER 621

AN ACT TO IMPROVE THE MANAGEMENT OF NONHAZARDOUS SOLID WASTE, TO REDEFINE THE STATE SOLID WASTE MANAGEMENT GOALS, AND TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO THE SOLID WASTE MANAGEMENT LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-290 is amended by adding four new subdivisions to read:

- "(18a) 'Municipal solid waste' means any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Municipal solid waste does not include hazardous waste, sludge, or solid waste from mining or agricultural operations.
- (18b) 'Municipal solid waste management facility' means any publicly or privately owned solid waste management facility permitted by the Department that receives municipal solid waste for processing, treatment, or disposal.
- (28a) 'Refuse-derived fuel' means a form of fuel derived from a municipal solid waste by a processing system in which recyclable and noncombustible materials are removed and the remaining combustible material is converted for use as a fuel.
- (41a) 'Tire-derived fuel' means a form of fuel derived from scrap tires."

Sec. 2. G.S. 130A-309.04 reads as rewritten:

" § 130A-309.04. *State solid waste management policy and goals.*

(a) It is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills and to assist units of local government with solid waste management. In furtherance of this State policy, there is established a hierarchy of methods of managing solid waste, in descending order of preference:

- (1) Waste ~~volume~~ reduction at the source;
- (2) Recycling and reuse;
- (3) Composting;
- (4) Incineration with energy production;
- (5) Incineration for volume reduction;
- (6) Disposal in landfills.

(b) It is the policy of the State to encourage research into innovative solid waste management methods and products and to encourage regional solid waste management projects.

(c) It is the goal of this State ~~that at least twenty-five percent (25%) of the total waste stream be recycled by 1 January 1993.~~ to reduce the municipal solid waste stream through source reduction, reuse, recycling, and composting, on a per capita basis, on the following schedule:

- (1) Twenty-five percent (25%) by 30 June 1993.
- (2) Forty percent (40%) by 30 June 2001.

(c1) To measure progress toward the municipal solid waste reduction goals in a given year, comparison shall be made between the amount by weight of the municipal solid waste that, during the baseline year and the given year, is received at municipal solid waste management facilities and is:

- (1) Disposed of in a landfill;
- (2) Incinerated;
- (3) Converted to tire-derived fuel; or
- (4) Converted to refuse-derived fuel.

(c2) Comparison shall be between baseline and given years beginning on 1 July and ending on 30 June of the following year. The baseline year shall be the year beginning 1 July 1991 and ending 30 June 1992. However, a unit of local government may use an earlier baseline year if it demonstrates to the satisfaction of the Department that it has sufficient data to support the use of the earlier baseline year.

(d) In furtherance of the State's solid waste management policy, each State agency shall develop a solid waste management plan ~~for any waste which it generates~~ which is consistent with the solid waste management policy of the State.

(e) Each county, either individually or in cooperation with others, shall, in cooperation with its municipalities, develop a comprehensive county solid waste management plan and submit the plan to the Department for approval. County solid waste management plans shall be updated and submitted for approval at least once every two years. A county solid waste management plan shall be consistent with the State's comprehensive solid waste plan. In counties where a municipality operates the major solid waste disposal facility, the comprehensive solid waste plan may be prepared by the municipality, with the approval of the county and in cooperation with the other municipalities. Each county's comprehensive solid waste management plan shall include provisions which address the State's ~~recycling goal, waste reduction goals~~. Each county's plan shall take into consideration facilities and other resources for management of solid waste which may be available through private enterprise. This section shall be construed to encourage the involvement and participation of private enterprise in solid waste management. The Department shall develop a form designed to elicit pertinent information regarding a county's solid waste management plan. The Department shall provide assistance in the preparation of county plans upon request.

(f) Any unit of local government that does not participate in a county solid waste management plan shall prepare a plan in accordance with the provisions of subsection (e) of this section."

Sec. 3. G.S. 130A-309.06(a) reads as rewritten:

"(a) In addition to other powers and duties set forth in this Part, the Department shall:

- (1) Develop a comprehensive solid waste management plan consistent with this Part by 1 March 1991. The plan shall be developed in consultation with units of local government and shall be updated at least every three years. In developing the State solid waste management plan, the Department shall hold public hearings around the State and shall give notice of these public hearings to all units of local government and regional planning agencies.
- (2) Provide guidance for the orderly collection, transportation, storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the State.
- (3) Encourage coordinated local activity for solid waste management within a common geographical area.
- (4) Provide planning, technical, and financial assistance to units of local government and State agencies for reduction, recycling, reuse, and processing of solid waste and for safe and environmentally sound solid waste management and disposal.
- (5) Cooperate with appropriate federal agencies and private organizations in carrying out the provisions of this Part.
- (6) Promote and assist the development of solid waste reduction, recycling, and resource recovery programs which preserve and enhance the quality of the air, water, and other natural resources of the State.
- (7) Maintain a directory of recycling and resource recovery systems in the State and provide assistance with matching recovered materials with markets.
- (8) Manage a program of grants for programs for recycling and special waste management, and for programs which provide for the safe and proper management of solid waste.
- (9) Provide for the education of the general public and the training of solid waste management professionals to reduce the production of solid waste, to ensure proper processing and disposal of solid waste, and to encourage recycling and solid waste reduction.
- (10) Develop descriptive literature to inform units of local government of their solid waste management responsibilities and opportunities.
- (11) Conduct at least one workshop each year in each region served by a council of governments.
- (12) Identify, based on reports required under G.S. 130A-309.14 and any other relevant information, those

materials in the municipal solid waste stream that are marketable in the State or any portion thereof and that should be recovered from the waste stream prior to treatment or disposal."

Sec. 4. G.S. 130A-309.06(c) reads as rewritten:

"(c) The Department shall prepare by 1 ~~March~~ May 1991, and every year thereafter, a report on the status of solid waste management efforts in the State. The scope of the report shall be determined by the resources available to the Department for its preparation and, to the extent possible, shall include:

- (1) A comprehensive analysis, to be updated in each report, of solid waste generation and disposal in the State projected for the 20-year period beginning on 1 July 1991.
- (2) The total amounts of solid waste generated, recycled, and disposed of and the methods of solid waste recycling and disposal used during the calendar year prior to the year in which the report is published.
- (3) An evaluation of the development and implementation of local solid waste management programs and county and municipal recycling programs.
- (4) An evaluation of the success of each county or group of counties in meeting the municipal solid waste reduction goal established in G.S. ~~130A-309.09(d)~~, 130A-309.04.
- (5) Recommendations concerning existing and potential programs for solid waste reduction and recycling that would be appropriate for units of local government and State agencies to implement to meet the requirements of this Part.
- (6) An evaluation of the markets for recycled materials and the success of State, local, and private industry efforts to enhance the markets for such materials.
- (7) Recommendations to the Governor and the General Assembly to improve the management and recycling of solid waste in the State."

Sec. 5. G.S. 130A-309.07(3) reads as rewritten:

- "(3) Planning guidance and technical assistance to counties and municipalities to aid in meeting the municipal solid waste reduction goals established in G.S. ~~130A-309.09(d)~~, 130A-309.04."

Sec. 6. G.S. 130A-309.08(d) reads as rewritten:

"(d) In order to assist in achieving the municipal solid waste reduction goal and the recycling provisions of G.S. ~~130A-309.09~~ 130A-309.09B, a county or a municipality which owns or operates a solid waste management facility may charge solid waste disposal fees which may vary based on a number of factors, including the amount,

characteristics, and form of recyclable materials present in the solid waste that is brought to the county's or the municipality's facility for processing or disposal."

Sec. 7. Subsections (a), (f), (g), and (r) of G.S. 130A-309.09 are recodified as G.S. 130A-309.09A and read as rewritten:

"§ ~~130A-309.09~~, 130A-309.09A, *Local government solid waste responsibilities*.

(a) The governing board of a designated local government shall provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas designated to be served by the facility. Pursuant to this section and notwithstanding any other provision of this Chapter, designated local governments may adopt ordinances governing the disposal in facilities which they operate of solid waste generated outside of the area designated to be served by such facility. Such ordinances shall not be construed to apply to privately operated disposal facilities located within the boundaries of a designated local government. In accordance with this section, municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by the municipality or county, any other municipality or county, or by any other person. Counties and municipalities may charge reasonable fees for the handling and disposal of solid waste at their facilities. The fees charged to municipalities without facilities at a solid waste management facility specified by the county shall not be greater than the fees charged to other users of the facility except as provided in G.S. 130A-309.08(d). Solid waste management fees collected on a countywide basis shall be used to fund solid waste management services provided throughout the county.

(b) Each unit of local government, either individually or in cooperation with one or more other units of local government, shall participate in the development and implementation of a solid waste management plan designed to meet the waste reduction goals set out in G.S. 130A-309.04 within the geographic area covered by the plan.

~~(f)~~ (c) The Department may reduce or modify the municipal solid waste reduction goal that a ~~designated unit~~ of local government is required to attempt to achieve pursuant to subsection ~~(d)~~ (b) of this section if the ~~designated unit~~ of local government demonstrates to the Department that:

- (1) The achievement of the goal ~~set forth in subsection (d)~~ would have an adverse effect on the financial obligations of a ~~designated the unit of~~ local government incurred prior to ~~the effective date of this section~~ 1 October 1989 that are directly related to a waste-to-energy facility owned or operated by or on behalf of ~~the designated a unit of~~ local government; and

- (2) The designated unit of local government cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility permitted prior to 1 July 1991 because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility. The goal ~~shall~~ may not be waived entirely and may ~~only~~ be reduced or modified only to the extent necessary to alleviate the adverse effects of achieving the goal on the financial viability of a designated unit of local government's waste-to-energy facility. Nothing in this subsection shall exempt a designated unit of local government from developing and implementing a recycling program pursuant to this Part.

~~(g) (d)~~ In order to assess the progress in meeting the goal established in subsection (d) of this section, goals set out in G.S. 130A-309.04, each designated local government county, either individually or in cooperation with one or more other counties, shall, by 1 ~~October 1990~~, December 1991 and each year thereafter, report to the Department ~~its annual~~ on the solid waste management program programs and recycling activities, activities within the county or the geographic area covered by the county's solid waste management plan. ~~The This~~ report by the designated local government county must include:

- (1) A description of ~~its~~ public education ~~program~~ programs on recycling;
- (2) The amount of solid waste ~~disposed of at~~ received at municipal solid waste disposal management facilities, by type of waste ~~such as yard trash, white goods, clean debris, tires, and unseparated solid waste~~; solid waste;
- (3) The amount and type of materials from the solid waste stream that were recycled;
- (4) The percentage of the population participating in various types of recycling activities instituted;
- (5) The ~~percent reduction each year~~ annual reduction in municipal solid waste disposed of at solid waste disposal facilities; waste, measured as provided in G.S. 130A-309.04;
- (6) A description of the recycling activities attempted, their success rates, the perceived reasons for failure or success, and the recycling activities which are ongoing and most successful; and
- (7) In its first report, a description of any recycling activities implemented prior to 1 July 1991.

(e) Any municipality that does not participate in the preparation of a county report shall prepare its own report in accordance with the provisions of subsection (d) of this section.

~~(f) On and after 1 July 1991, each operator of a municipal solid waste management facility owned or operated by or on behalf of a county or municipality, except existing facilities which will not be in use one year after the effective date of this section, shall weigh all solid waste when it is received."~~

Sec. 8. Subsections (b), (c), (i), (j), (k), (l), and (m) of G.S. 130A-309.09 are recodified as G.S. 130A-309.09B and read as rewritten:

" § 130A-309.09B. Local government recycling programs.

~~(b) (a)~~ Each designated local government shall initiate a recyclable materials recycling program by 1 July 1991. Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs. The following requirements shall apply:

(1) Construction and demolition debris must be separated from the solid waste stream and segregated in separate locations at a solid waste disposal facility or other permitted site.

~~(2) At a minimum, a majority of marketable materials identified pursuant to G.S. 130A-309.14(b) must be separated from the solid waste stream prior to final disposal at a solid waste disposal facility and must be offered for recycling if the separation and collection of these materials is economically feasible and markets for such materials exist in such proximity as to make transportation of such materials to such markets economically feasible.~~

(3) Units of local government are encouraged to separate all marketable plastics, glass, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other mechanically treated organic solid waste into compost available for agricultural and other acceptable uses.

~~(c) (b)~~ Each designated local government shall ensure, to the maximum extent possible, that municipalities within its boundaries practicable, units of local government should participate in the preparation and implementation of joint recycling and solid waste management programs, whether through joint agencies established pursuant to G.S. 153A-421, G.S. 160A-462, or any other means provided by law. Nothing in a county's solid waste management or recycling program shall affect the authority of a municipality to franchise or otherwise provide for the collection of solid waste generated within the boundaries of the municipality.

(4) (c) In the development and implementation of a curbside recyclable materials collection program, a county or municipality shall enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. If the county or municipality and the franchisee fail to reach an agreement within 60 days from the initiation of negotiations, the county or municipality may solicit proposals from other persons to undertake curbside recyclable materials collection responsibilities for the county or municipality as it may require. Upon the determination of the lowest responsible proposals, the county or municipality may undertake, or enter into a written agreement with the person who submitted the lowest responsible proposal to undertake, the curbside recyclable materials collection responsibilities for the county or municipality, notwithstanding the exclusivity of any franchise agreement for the collection of solid waste within a service area of the county or municipality.

(4) (d) In developing and implementing recycling programs, counties and municipalities shall give consideration to the collection, marketing, and disposition of recyclable materials by persons engaged in the business of recycling on either a for-profit or nonprofit basis. Counties and municipalities are encouraged to use for-profit and nonprofit organizations in fulfilling their responsibilities under this Part.

(4) (e) A county or county and the municipalities within the county's or counties' boundaries may jointly develop a recycling program, provided that the county and each municipality must enter into a written agreement to jointly develop a recycling program. If a municipality does not participate in jointly developing a recycling program with the county within which it is located, the county may require the municipality to provide information on recycling efforts undertaken within the boundaries of the municipality in order to determine whether the goals for municipal solid waste reduction are being achieved.

(4) (f) ~~It is the policy of the State that a~~ A county or counties and its or their municipalities may jointly determine, through a joint agency established pursuant to G.S. 153A-421 or G.S. 160A-462 ~~or by requesting the passage of special legislation, 160A-462,~~ which local governmental agency shall administer a solid waste management or recycling program.

(4) (g) ~~The designated~~ A unit of local government that enters into an agreement with one or more other units of local government to develop and operate a recycling program shall provide ~~written notice to~~

~~all units of local government within the designated local government when recycling program development begins and shall provide periodic written progress reports to the units of local government concerning the preparation implementation of the recycling program."~~

Sec. 9. Subsections (h), (n), (o), (p), (q), (s), and (t) of G.S. 130A-309.09 are recodified as G.S. 130A-309.09C and read as rewritten:

" § 130A-309.09C. Additional powers of local governments; construction of this Part; effect of noncompliance.

~~(q)~~ (a) To effect the purposes of this Part, counties and municipalities are authorized, in addition to other powers granted pursuant to this Part:

- (1) To contract with persons to provide resource recovery services or operate resource recovery facilities on behalf of the county or municipality.
- (2) To indemnify persons providing resource recovery services or operating resource recovery facilities for liabilities or claims arising out of the provision or operation of such services or facilities that are not the result of the sole negligence of the persons providing the services or operating the facilities.
- (3) To contract with persons to provide solid waste disposal services or operate solid waste disposal facilities on behalf of the county or municipality.

~~(h)~~ (b) A county or municipality may enter into a written agreement with other persons, including persons transporting solid waste, to undertake to fulfill some or all of the county's or municipality's responsibilities under this ~~section~~ Part.

~~(n)~~ (c) Nothing in this ~~section~~ Part shall be construed to prevent the governing board of any county or municipality from providing by ordinance or regulation for solid waste management standards which are stricter or more extensive than those imposed by the State solid waste management program and rules and orders issued to implement the State program.

~~(e)~~ (d) Nothing in this Part or in any rule adopted by any agency shall be construed to require any county or municipality to participate in any regional solid waste management until the governing board of the county or municipality has determined that participation in such a program is economically feasible for that county or municipality. Nothing in this Part or in any special or local act or in any rule adopted by any agency shall be construed to limit the authority of a municipality to regulate the disposal of solid waste located within its boundaries or generated within its boundaries so long as a facility for any such disposal has been approved by the Department, unless the

municipality is included within a solid waste management program created under a joint agency or special or local act. If bonds had been issued to finance a solid waste management program in reliance on State law granting to a ~~designated local government~~ unit of local government, a region, or a special district the responsibility for the solid waste management program, nothing herein shall permit any governmental agency to withdraw from the program if the agency's participation is necessary for the financial feasibility of the project, so long as the bonds are outstanding.

~~(p)~~ (e) Nothing in this Part or in any rule adopted by any State agency pursuant to this Part shall require any person to subscribe to any private solid waste collection service.

~~(s)~~ (f) In the event ~~the power to manage solid waste has been granted to a special district~~ a region, special district, or other entity by special act or joint agency, has been established to manage solid waste, any duty or responsibility or penalty imposed under this Part on a county or municipality unit of local government shall apply to such region, special district, or other entity to the extent of the grant of the duty or responsibility or imposition of such penalty. To the same extent, such region, special district, or other entity shall be eligible for grants or other benefits provided pursuant to this Part.

~~(t)~~ (g) In addition to any other penalties provided by law, a unit of local government that does not comply with the requirements of ~~subsections (b) and (d)~~ G.S. 130A-309.09A(b) and G.S. 130A-309.09B(a) shall not be eligible for grants from the Solid Waste Management Trust Fund, and the Department may notify the State Treasurer to withhold payment of all or a portion of funds payable to the unit of local government by the Department from the General Fund or by the Department from any other State fund, to the extent not pledged to retire bonded indebtedness, unless the unit of local government demonstrates that good faith efforts to meet the requirements of ~~subsections (b) and (d)~~ G.S. 130A-309.09A(b) and G.S. 130A-309.09B(a) have been made or that the funds are being or will be used to finance the correction of a pollution control problem that spans jurisdictional boundaries."

Sec. 10. Subsections (d) and (e) of G.S. 130A-309.09 are repealed.

Sec. 11. Part 2A of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

" § 130A-309.09D. Responsibilities of owners and operators of privately owned municipal solid waste management facilities.

(a) The owner or operator of a privately owned municipal solid waste management facility shall operate the facility in a manner which is consistent with the State solid waste management plan and with the

solid waste management plans that have been adopted by those units of local government served by the facility and approved by the Department.

(b) On or before 1 August 1992 and each year thereafter, the owner or operator of a privately owned municipal solid waste management facility shall report to the Department, for the previous year beginning 1 July and ending 30 June, the amount by weight of the solid waste that was received at the facility and disposed of in a landfill, incinerated, or converted to fuel. To the maximum extent practicable, such reports shall indicate by weight the county of origin of all solid waste. The owner or operator shall transmit a copy of the report to the county in which the facility is located and to each county from which solid waste originated."

Sec. 12. Part 2A of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

" § 130A-309.29. Adoption of rules.

The Commission may adopt rules to implement the provisions of this Part pursuant to Article 2 of Chapter 150B of the General Statutes."

Sec. 13. (a) The Environmental Review Commission shall study the management of nonhazardous solid waste in the State. The study shall include, but is not limited to:

- (1) Issues relating to control of the nonhazardous solid waste stream.
- (2) The relation between State and local solid waste management plans required by G.S. 130A-309.07 and G.S. 130A-309.04(e) and the issuance of permits for nonhazardous solid waste management facilities.

(b) The Environmental Review Commission may request any appropriate committee, commission, or State agency to conduct all or any part of the study authorized by this section and to report its findings and recommendations either to the Environmental Review Commission or directly to the General Assembly. If the committee, commission, or State agency agrees to conduct the study, the committee, commission, or State agency shall do so using funds already appropriated or otherwise available to it.

(c) The Environmental Review Commission may report its findings, together with any recommended legislation, to either the 1992 Regular Session of the 1991 General Assembly or to the 1993 General Assembly by filing copies of its report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

Sec. 14. G.S. 14-399.2(b), as amended by Chapter 236 of the 1991 Session Laws, reads as rewritten:

"(b) No person may sell or distribute for sale in this State any container connected to another by a yoke or ring type holding device constructed of plastic that is neither degradable nor recyclable. No person may sell or distribute for sale in this State any container connected to another by a yoke or ring type holding device constructed of plastic that is recyclable but that is not degradable unless such device does not have an orifice larger than one and ~~one-half~~ three-fourths inches. The manufacturer of a degradable yoke or ring type holding device shall emboss or mark the device with a nationally recognized symbol indicating that the device is degradable. The manufacturer of a recyclable yoke or ring type holding device shall emboss or mark the device with a symbol of the type specified in G.S. 130A-309.10(e) indicating the plastic resin used to produce the device and that the device is recyclable. The manufacturer shall register the symbol with the Secretary of State with a sample of the device."

Sec. 15. This act is effective upon ratification except that Section 14 of this act becomes effective 1 October 1991.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

S.B. 284

CHAPTER 622

AN ACT TO INCREASE THE PENALTY FOR CARRYING A WEAPON ON SCHOOL PREMISES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-269.2 reads as rewritten:

"§ 14-269.2. *Weapons on campus or other educational property.*

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any gun, rifle, pistol, dynamite cartridge, bomb, grenade, mine, powerful explosive as defined in G.S. 14-284.1, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles or any other weapon of like kind, not used solely for instructional or school sanctioned ceremonial purposes, in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field, or other property owned, used or operated by any board of education, school, college, or university board of trustees or directors for the administration of any public or private educational institution. For the purpose of this section a self-opening or switchblade knife is defined as a knife containing a blade or blades which open automatically by the release of a spring or a similar contrivance, and the above phrase 'weapon of like kind' includes razors and razor blades (except solely for personal shaving) and any sharp pointed or edged instrument

except unaltered nail files and clips and tools used solely for preparation of food, instruction and maintenance. This section shall not apply to the following persons: Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms or weapons, civil officers of the United States while in the discharge of their official duties, officers and soldiers of the militia and the national guard when called into actual service, officers of the State, or of any county, city, or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties, any pupils who are members of the Reserve Officer Training Corps and who are required to carry arms or weapons in the discharge of their official class duties, and any private police employed by the administration or board of trustees of any public or private institution of higher education when acting in the discharge of their duties.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court ~~by fine or imprisonment or by both such fine and imprisonment, not to exceed five hundred dollars (\$500.00) fine or six months imprisonment."~~

Sec. 2. This act becomes effective October 1, 1991, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 1991.

S.B. 450

CHAPTER 623

AN ACT TO PROVIDE FOR THE CERTIFICATION OF WATER POLLUTION CONTROL SYSTEM OPERATORS BY EXPANDING THE FUNCTIONS OF THE WASTEWATER TREATMENT PLANT OPERATORS CERTIFICATION COMMISSION AND TO RENAME THE COMMISSION AS THE WATER POLLUTION CONTROL SYSTEM OPERATORS CERTIFICATION COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 372 of the 1989 Session Laws is repealed.

Sec. 2. The catch line of Article 3 of Chapter 90A of the General Statutes reads as rewritten:

"ARTICLE 3.

"Certification of ~~Wastewater Treatment Plant~~
Water Pollution Control System Operators."

Sec. 3. G.S. 90A-35 reads as rewritten:

" § 90A-35. ~~(Effective until September 1, 1991)~~ Purpose.

It is the purpose of this Article to protect the public health and to conserve and protect the quality of the water resources of the State and maintain the quality of receiving streams waters as assigned by the North Carolina Environmental Management Commission: to protect the public investment in wastewater treatment facilities; water pollution control systems; to provide for the classifying of wastewater treatment plants; classification of water pollution control systems; to require the examination of wastewater treatment plant water pollution control system operators and the certification of their competency to supervise the operation of such facilities; systems; and to establish procedures for such classification and certification."

Sec. 4. G.S. 90A-37 reads as rewritten:

" § 90A-37. ~~(Effective until September 1, 1991)~~ Classification of wastewater treatment facilities, water pollution control systems.

The ~~Wastewater Treatment Plant Operators Certification~~ Commission, with the advice and assistance of the Secretary of Environment, Health, and Natural Resources, shall classify all wastewater treatment facilities under the jurisdiction of the North Carolina Environmental Management Commission, as provided in G.S. 143-215.1, and those operated by institutions and agencies of the State of North Carolina, water pollution control systems. In making the classification, the ~~Wastewater Treatment Plant Operators Certification~~ Commission shall give due regard, among other factors, to the size of the facility, system, the nature of the wastes to be treated or removed from the wastewater, the treatment process to be employed, and the degrees of skill, knowledge and experience that the operator of the wastewater treatment facility water pollution control system must have to supervise the operation of the facility system so as to adequately protect the public health and maintain the water quality standards in of the receiving waters as assigned by the North Carolina Environmental Management Commission."

Sec. 5. G.S. 90A-38 reads as rewritten:

" § 90A-38. ~~(Effective until September 1, 1991)~~ Grades of certificates.

(a) The ~~Wastewater Treatment Plant Operators Certification~~ Commission, with the advice and assistance of the Secretary of Environment, Health, and Natural Resources, shall establish grades and types of certification for wastewater treatment plant water pollution control system operators corresponding to the classification of wastewater treatment facilities, water pollution control systems. The grades of certification shall be ranked so that a person holding a certification in the highest grade is thereby affirmed competent to operate wastewater treatment facilities water pollution control systems of that type in the highest classification and any treatment facility water

pollution control system of that type in a lower classification; a person holding a certification in the next highest grade is affirmed as competent to operate wastewater treatment facilities water pollution control systems in the next-to-the-highest classification of that type and any lower classification; classification of that type; and in a like manner through the range of grades of certification and classification of wastewater treatment facilities, water pollution control systems.

(b) No certificate shall be required under this Article to operate a conventional septic tank system. For purposes of this section, 'conventional septic tank system' means a subsurface sanitary sewage system consisting of a settling tank and a subsurface disposal field without a pump or other appurtenances."

Sec. 6. G.S. 90A-39 reads as rewritten:

" § 90A-39. ~~(Effective until September 1, 1991)~~ Operator qualifications and examination.

~~The Wastewater Treatment Plant Operators Certification Commission, with the advice and assistance of the Secretary of Environment, Health, and Natural Resources, shall establish minimum requirements of education, experience ~~experience~~, and knowledge for each grade of certification for wastewater treatment plant operators, water pollution control facility operators and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate to the end that prompt and fair consideration be given every application ~~applicant~~ and the wastewater treatment facilities that the water pollution control systems within the State may be adequately supervised by certified operators."~~

Sec. 7. G.S. 90A-40 reads as rewritten:

" § 90A-40. ~~(Effective until September 1, 1991)~~ Issuance of certificates.

~~(a) An applicant, upon meeting satisfactorily the appropriate requirements, shall be issued a suitable certificate by the Wastewater Treatment Plant Operators Certification Commission designating the level of his competency. Certificates shall be permanent unless revoked for cause or replaced by one of a higher grade. Once issued, a certificate shall be valid unless:~~

- (1) The certificate holder voluntarily surrenders the certificate to the Commission;
- (2) The certificate is replaced by one of a higher grade;
- (3) The certificate is revoked by the Commission for cause; or
- (4) The certificate holder fails to pay the annual renewal fee when due.

~~(b) A certificate may be issued in an appropriate grade without examination to any person who is properly registered on the 'National~~

Association of Boards of Certification' reciprocal registry and who meets all other requirements of rules adopted under this Article.

(c) Repealed by Session Laws 1987, c. 582, s. 2.

~~(d) Certificates in an appropriate grade will be issued without examination to any person or persons certified by the governing board in the case of a city, town, county, sanitary district, or other political subdivision, or by the owner in the case of a private utility or industry, to have been in responsible charge of its wastewater treatment facilities on the date the Wastewater Treatment Plant Operators Certification Commission notifies the governing board, or owner, of the classification of its treatment facility, and if the application for such certification is made within one year of the date of notification. A certificate so issued will be valid for use by the holder only in the treatment facility for which he had responsible charge at the time of his certification. Provided: that no certification shall be issued under this subsection after July 1, 1979. Operators of these facilities receiving initial notification of classification after July 1, 1979, shall be eligible for a temporary certificate to be valid as provided in subsection (e).~~

(e) ~~Temporary certificates, in any grade and without examination. Temporary certificates in an appropriate grade may be issued without examination to any person employed as a wastewater treatment plant water pollution control system operator when the Wastewater Treatment Plant Operators Certification Commission finds that the supply of certified operators, operators or persons with training and experience necessary to certification, is inadequate or when certificates without examination would formerly have been granted under subsection (d) of this section, for certification is inadequate.~~ Temporary certificates shall be valid for only one year, but may be renewed. Temporary certificates may be issued with such special conditions or requirements relating to the place of employment of the person holding the certificate, his supervision on a consulting or advisory basis, or other matters as the ~~Wastewater Treatment Plant Operators Certification~~ Commission may deem necessary to protect the public health and maintain the water quality standards in of the receiving waters as assigned by the North Carolina Environmental Management Commission.

(f) Certificates in an appropriate grade and type may be issued without examination to water pollution control system operators who on 1 January 1992 hold certificates of competency issued under the voluntary certification program administered by the North Carolina Water Pollution Control Association."

Sec. 8. G.S. 90A-41 reads as rewritten:

" § 90A-41. ~~(Effective until September 1, 1991)~~ Revocation of certificate.

The ~~Wastewater Treatment Plant Operators Certification~~ Commission, in accordance with the procedure set forth in Chapter 150B of the General Statutes of North Carolina, Statutes, may suspend or revoke ~~the certificate of an operator~~ a certificate or may issue a written reprimand to an operator ~~when it is found~~ if it finds that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to properly perform his duties."

Sec. 9. G.S. 90A-42 reads as rewritten:

"§ 90A-42. ~~(Effective until September 1, 1991) Fees.~~

(a) The ~~Wastewater Treatment Plant Operators Certification~~ Commission, in establishing procedures for implementing the requirements of this Article, shall impose the following schedule of fees:

- (1) Examination including Certificate, ~~\$25.00;~~ \$75.00;
- (2) Temporary Certificate, ~~\$35.00;~~ \$200.00;
- (3) Temporary Certification Renewal, ~~\$50.00;~~ \$300.00;
- (4) Conditional Certificate, ~~\$25.00;~~ \$75.00;
- (5) Repealed by Session Laws 1987, c. 582, s. 3.
- (6) Reciprocity Certificate, ~~\$50.00;~~ \$100.00;
- (6a) Voluntary Conversion Certificate, \$50.00;
- (7) Annual Renewal, ~~\$15.00;~~ \$30.00;
- (8) Replacement of Certificate, ~~\$15.00;~~ \$20.00;
- (9) Late Payment of Annual Renewal, ~~\$15.00~~ \$50.00 penalty in addition to all current and past due fees; and annual renewal fees plus one hundred dollars (\$100.00) penalty per year for each year for which annual renewal fees were not paid prior to the current year; and
- (10) Mailing List Charges -- The ~~Wastewater Treatment Plant Operators Certification~~ Commission may provide mailing lists of certified ~~wastewater treatment plant~~ water pollution control system operators and of ~~wastewater treatment plants~~ water pollution control system operators to persons who request such lists. The charge for such lists shall be ~~five dollars (\$5.00) per 100 names of certified operators or treatment plants, with a minimum charge of fifty dollars (\$50.00),~~ twenty-five dollars (\$25.00) for each such list provided.

(b) There is established within the Department a separate nonreverting fund into which fees collected pursuant to this section shall be credited. Subject to appropriation by the General Assembly, this fund shall be used to defray the costs of administering this Article."

Sec. 10. G.S. 90A-43 reads as rewritten:

" § 90A-43. ~~(Effective until September 1, 1991)~~ Promotion of training and other powers.

The ~~Wastewater Treatment Plant Operators Certification~~ Commission and the Secretary of Environment, Health, and Natural Resources are authorized to take all necessary and appropriate steps in order to effectively and fairly achieve the purposes of this Article, including, but not limited to, the providing of training for water pollution control system operators and cooperating with educational institutions and private and public ~~associations, associations,~~ persons, or corporations in the promotion of training for wastewater treatment water pollution control system personnel."

Sec. 11. G.S. 90A-44 reads as rewritten:

" § 90A-44. Certified operators required.

~~On and after July 1, 1971, every~~ No person, firm, or corporation, municipal or private, owning or having control of a ~~wastewater treatment works~~ water pollution control system ~~shall have the obligation of assuring that the operator in responsible charge of such plant is duly certified by the Wastewater Treatment Plant Operators Certification Commission under the provisions of this Article, for which a certified operator is required under rules adopted by the Commission shall allow such system to be operated by any person who does not hold a currently valid certificate in an appropriate grade and type issued by the Commission. No person, after July 1, 1971, No person shall perform the duties of an operator, in responsible charge of a wastewater treatment works, a water pollution control system operator in responsible charge without being duly certified under the provisions of this Article. No person shall perform the duties of a water pollution control system operator who has not paid all fees required under this Article."~~

Sec. 12. G.S. 90A-45 reads as rewritten:

" § 90A-45. ~~(Effective until September 1, 1991)~~ Commercial ~~wastewater treatment operation~~ water pollution control system operating firms.

(a) ~~Every~~ Any person, firm, or corporation, municipal or private, owning or having control of a ~~wastewater treatment works~~ water pollution control system may contract with a responsible commercial ~~wastewater treatment works operation~~ water pollution control system operating firm for operational and other services of that ~~firm, firm, and that~~ Such firm shall designate an employee as the operator in responsible charge, charge of the water pollution control system. ~~Such designee and other licensed employees of the firm employee and any other employees who have been duly certified under this Article shall be responsible for the total operation and maintenance of the wastewater treatment works, water pollution control system.~~

~~Contractual~~ Commercial water pollution control system operating firms shall not be limited as to the number of ~~facilities, systems,~~ distance between ~~facilities, systems,~~ location of office or residence, ~~frequency of visits,~~ utilization of local persons who are not certified, or other internal management procedures.

(b) Any employee designated by the firm as operator in responsible charge must ~~obtain certification from the Wastewater Treatment Plant Operators Certification~~ hold an appropriate certificate issued by the Commission and must comply with all of the requirements ~~specified in Chapter 90A and the rules and reasonable standards of the Commission, applicable to all operators in responsible charge, designed to assure satisfactory operation of wastewater facilities.~~ of this Article and rules adopted by the Commission.

(c) The Commission may adopt rules requiring that any commercial water pollution control system operating firm file an annual report with the Commission as to the operation of such system."

Sec. 13. Article 3 of Chapter 90A of the General Statutes is amended by adding a new section to read:

"§ 90A-46. *Definitions.*

The following definitions shall apply throughout this Article:

- (1) 'Commercial water pollution control system operating firm' means a person who contracts to operate a water pollution control system for any person who holds a permit for a water pollution control system, other than an employee of the permittee.
- (2) 'Commission' means the Water Pollution Control System Operators Certification Commission.
- (3) 'Waste' has the same meaning as in G.S. 143-213.
- (4) 'Operator' means a person who holds a currently valid certificate as a water pollution control system operator issued by the Commission under rules adopted pursuant to this Article.
- (5) 'Operator in responsible charge' means the person designated by a person owning or having control of a water pollution control system as the operator of record of the water pollution control system and who has primary responsibility for the operation of such system.
- (6) 'Water pollution control system' means a system for the collection, treatment, or disposal of waste for which a permit is required under rules adopted by either the North Carolina Environmental Management Commission or the Commission for Health Services."

Sec. 14. The catch line of Part 9 of Article 7 of Chapter 143B of the General Statutes reads as rewritten:

"Part 9. ~~Wastewater Treatment Plant~~ Water Pollution Control System Operators Certification Commission."

Sec. 15. G.S. 143B-300 reads as rewritten:

"§ 143B-300. ~~Wastewater Treatment Plant~~ Water Pollution Control System Operators Certification Commission -- creation; powers and duties.

(a) There is hereby created the ~~Wastewater Treatment Plant~~ Water Pollution Control System Operators Certification Commission to be located in the Department of Environment, Health, and Natural Resources. The Commission shall adopt rules with respect to the certification of ~~wastewater treatment plant~~ water pollution control system operators as provided by Article 3 of Chapter 90A of the General Statutes of North Carolina, Statutes.

(b) The Commission shall adopt such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for programs concerned with the certification of ~~wastewater treatment plant~~ water pollution control system operators which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(c) The Commission may by rule delegate any of its powers, other than the power to adopt rules, to the Secretary of Environment, Health, and Natural Resources or his designee."

Sec. 16. G.S. 143B-301 reads as rewritten:

"§ 143B-301. (~~Effective until September 1, 1991~~) ~~Wastewater Treatment Plant~~ Water Pollution Control System Operators Certification Commission -- members; selection; removal; compensation; quorum; services.

(a) The ~~Wastewater Treatment Plant~~ Water Pollution Control System Operators Certification Commission shall consist of ~~seven~~ nine members appointed by the Secretary of Environment, Health, and Natural Resources with the approval of the Environmental Management Commission with the following qualifications:

- (1) Two members shall be currently employed as ~~wastewater treatment plant~~ water pollution control facility operators, wastewater plant water pollution control system superintendents, superintendents or directors, water and sewer superintendents, superintendents or directors, or equivalent positions with a North Carolina municipality;
- (2) One member shall be manager of a North Carolina municipality having a population of more than 10,000 as of the most recent federal census;
- (3) One member shall be manager of a North Carolina municipality having a population of less than 10,000 as of the most recent federal census;

- (4) One member shall be employed by a private industry and shall be responsible for supervising the treatment or pretreatment of industrial wastewater;
- (5) One member who is a faculty member of a four-year college or university and whose major field is related to wastewater treatment; ~~and~~
- (6) One member who is employed by the Department of Environment, Health, and Natural Resources and works in the field of water pollution control, who shall serve as Chairman of the ~~Commission~~, Commission;
- (7) One member who is employed by a commercial water pollution control system operating firm; and
- (8) One member shall be currently employed as a water pollution control system collection operator, superintendent, director, or equivalent position with a North Carolina municipality.

~~(b) The initial members of the Commission shall be the members of the Wastewater Treatment Plant Operators Board of Certification who shall serve for a period equal to the remainder of their current terms on the Wastewater Treatment Plant Operators Board of Certification. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for staggered terms of three years and until their successors are appointed and qualify. Appointments to the Commission shall be for a term of three years. Terms shall be staggered so that three terms shall expire on 30 June of each year, except that members of the Commission shall serve until their successors are appointed and duly qualified as provided by G.S. 128-7.~~

~~(c) The chairman of the Wastewater Treatment Plant Operators Certification Commission shall serve at the pleasure of the Secretary of Environment, Health, and Natural Resources. The Commission shall elect a Vice-Chairman from among its members. The Vice-Chairman shall serve from the time of his election until 30 June of the following year, or until his successor is elected.~~

(d) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(e) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13.

(f) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15.

(g) A majority of the Commission shall constitute a quorum for the transaction of business.

(h) All clerical and other services required by the Commission shall be supplied by the Secretary of Environment, Health, and Natural Resources."

Sec. 17. Part 9 of Article 7 of Chapter 143B is amended by adding a new section to read:

"§ 143B-301.1. Definitions.

The definitions set out in G.S. 90A-46 shall apply through this Part."

Sec. 18. This act shall not be construed to affect the validity of any certificate issued by the Wastewater Treatment Plant Operators Certification Commission prior to the date this act becomes effective.

Sec. 19. The Water Pollution Control Systems Operators Certification Commission may establish an implementation schedule for the classification of water pollution control systems and for the certification of water pollution control system operators. Such schedule shall provide for the full implementation of this act by 1 July 1993.

Sec. 20. Members of the Wastewater Treatment Plant Operators Certification Commission shall be initial members of the Water Pollution Control System Operators Certification Commission. Each such member shall serve until 30 June of the year in which his term on the Wastewater Treatment Plant Operators Certification Commission expires and until his successor is appointed and duly qualified. Other initial appointments to the Water Pollution Control System Operators Certification Commission shall be made for a term of two, three, or four years to achieve staggered terms as required by G.S. 143B-301(b).

Sec. 21. This act becomes effective 1 July 1991.

In the General Assembly read three times and ratified this the 10th day of July, 1991.

H.B. 20

CHAPTER 624

AN ACT TO PROVIDE FOR A MORE EFFICIENT AND
EQUITABLE PROCEDURE FOR ASSESSING AND
COLLECTING LOCAL AD VALOREM PROPERTY TAXES ON
CERTAIN MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. Subchapter II of Chapter 105 of the North Carolina General Statutes is amended by adding after Article 22 a new Article to read:

"ARTICLE 22A.
"Motor Vehicles.

"§ 105-330. Definitions.

The following definitions apply in this Article:

- (1) Classified motor vehicle. A motor vehicle classified under this Article.
- (2) Motor vehicle. Defined in G.S. 20-4.01(23).
- (3) Public service company. Defined in G.S. 105-333(14).

"§ 105-330.1. Classification of motor vehicles.

All motor vehicles, except (i) manufactured homes and (ii) motor vehicles owned by a public service company or leased by a public service company and included in the company's system property under G.S. 105-335(b)(1), are hereby designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Classified motor vehicles shall be listed and assessed as provided in this Article and taxes on classified motor vehicles shall be collected as provided in this Article.

"§ 105-330.2. Appraisal, ownership, and situs.

(a) The value of a classified motor vehicle that is registered shall be determined annually as of January 1 preceding the date a new registration is applied for or the current registration is renewed. If the value of a new motor vehicle cannot be determined as of January 1 preceding the date the new registration is applied for, the value of that vehicle shall be determined for that year as of the first day of the month in which the new registration is applied for. The value of a classified motor vehicle that is unregistered shall be determined as of January 1 of the year in which the motor vehicle is required to be listed pursuant to G.S. 105-330.3(a)(2). The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be determined annually as of the day on which the current vehicle registration is renewed or the day on which a new registration is applied for. The ownership, situs, and taxability of a classified motor vehicle listed or discovered pursuant to G.S. 105-330.3(a)(2) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed.

(b) A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. The owner of a classified motor vehicle may appeal the appraisal, situs, or taxability of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property. Notwithstanding G.S. 105-312(d), an owner who appeals the listing, valuation, or assessment of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

(c) The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles, shall enter into a memorandum of understanding concerning the vehicle identification information, name and address of the owner, and other information that will be required on the motor vehicle registration forms to implement the tax listing and collection provisions of this Article, and this information shall appear on the forms beginning January 1, 1993.

"§ 105-330.3. Assessor's duty to list classified motor vehicles; application for exempt status.

(a) (1) Registered Vehicles. The assessor shall list, appraise, and assess all taxable classified motor vehicles for county, municipal, and special district taxes each year in the name of the record owner as of the day on which the current vehicle registration is renewed or the day on which a new registration is applied for. The owner of a classified motor vehicle listed pursuant to this subdivision need not list the vehicle as provided in G.S. 105-306; G.S. 105-312 does not apply to classified motor vehicles listed pursuant to this subdivision.

(2) Unregistered Vehicles. The owner of a classified motor vehicle who does not register the vehicle or does not renew the registration of the vehicle on or before the expiration date of the current registration shall list the vehicle for taxes by filing an abstract with the assessor of the county in which the vehicle is located on or before January 31 following the date the unregistered vehicle is acquired or, in the case of a registration that is not renewed, January 31 following the date the registration expires, and on or before January 31 of each succeeding year that the vehicle is unregistered. If a classified motor vehicle listed pursuant to this section is registered during the calendar year in which it was listed, it shall be taxed for the fiscal year that opens in the calendar year of listing as an unregistered vehicle. A vehicle required to be listed pursuant to this subdivision that is not listed by January 31 shall be subject to discovery pursuant to G.S. 105-312.

(b) The owner of a classified motor vehicle who claims an exemption or exclusion from tax under this Subchapter has the burden of establishing that the vehicle is entitled to the exemption or exclusion. The owner may establish prima facie entitlement to exemption or exclusion of the classified motor vehicle by filing an application for exempt status with the assessor. When an approved

application is on file, the assessor shall omit from the tax records classified motor vehicles described in the application.

(c) The owner of a classified motor vehicle that has been omitted from the tax records as provided in subsection (b) shall report to the assessor any classified motor vehicle registered in the owner's name or owned by him that does not qualify for exemption or exclusion for the current year. This report shall be made within 30 days after the renewal of registration or initial registration of the vehicle or, for an unregistered vehicle, on or before January 31 of the year in which the vehicle is required to be listed by subdivision (a)(2). A classified motor vehicle that does not qualify for exemption or exclusion but has been omitted from the tax records as provided in subsection (b) is subject to discovery under the provisions of G.S. 105-312, except that in lieu of the penalties prescribed by G.S. 105-312(h) there shall be assessed a penalty of one hundred dollars (\$100.00) for each registration period that elapsed before the disqualification was discovered.

(d) The provisions of G.S. 105-282.1 do not apply to classified motor vehicles.

" § 105-330.4. Due date, interest, and enforcement remedies.

(a) Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be due each year on the first day of the fourth month following the date the registration expires or on the first day of the fourth month following the last day of the month in which the new registration is applied for. Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) shall be due on September 1 following the date by which the vehicle was required to be listed.

(b) Subject to the provisions of G.S. 105-395.1, interest on unpaid taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) accrues at the rate of three-fourths of one percent (3/4%) per month following the date the taxes were due until the taxes are paid. Subject to the provisions of G.S. 105-395.1, interest on delinquent taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) accrues as provided in G.S. 105-360(a) and discounts shall be allowed as provided in G.S. 105-360(c).

(c) Unpaid taxes on classified motor vehicles may be collected by levying on the motor vehicle taxed or on any other personal property of the taxpayer pursuant to G.S. 105-366 and G.S. 105-367, or by garnishment of the taxpayer's property pursuant to G.S. 105-368. Notwithstanding the provisions of G.S. 105-366(b), the enforcement measures of levy, attachment, and garnishment may be used to collect unpaid taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) at any time after interest accrues. Notwithstanding the

provisions of G.S. 105-355, taxes on classified motor vehicles do not become a lien on real property owned by the taxpayer.

" § 105-330.5. Listing and collecting procedures.

(a) For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1), upon receiving the registration lists from the Division of Motor Vehicles each month, the assessor shall prepare a tax notice for each vehicle; the tax notice shall contain all county, municipal, and special district taxes due on the motor vehicle. In computing the taxes, the assessor shall appraise the motor vehicle in accordance with G.S. 105-330.2 and shall use the tax rates of the various taxing units in effect on the first day of the month in which the current vehicle registration expired or the new registration was applied for. This procedure shall constitute the listing and assessment of each classified motor vehicle for taxation.

(b) For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2), the assessor shall appraise each vehicle in accordance with G.S. 105-330.2. The assessor shall prepare a tax notice for each vehicle before September 1 following the January 31 listing date; the tax notice shall include all county, municipal, and special district taxes due on the motor vehicle. In computing the taxes, the assessor shall use the tax rates of the various taxing units in effect for the fiscal year that begins on July 1 following the January 31 listing date.

(c) When the tax notice is prepared, the county tax collector shall mail a copy of the notice, with appropriate instructions for payment, to the motor vehicle owner. The county may retain the actual cost of collecting municipal and special district taxes collected pursuant to this section, not to exceed one and one-half percent (1 1/2%) of the amount of taxes collected. The county finance officer shall establish procedures to ensure that tax payments received pursuant to this section are properly accounted for and taxes due other taxing units are remitted to the units to which they are due no later than 30 days after the date of collection.

(d) The county shall include taxes on classified motor vehicles in the tax levy for the fiscal year in which the taxes become due and shall charge the taxes to the tax collector for that year.

" § 105-330.6. Motor vehicle tax year; transfer of plates; surrender of plates.

(a) The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall begin on the first day of the first month following the date on which the registration expires or the new registration is applied for and end on the last day of the twelfth month following the date on which the registration expires or the new registration is applied for. The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) shall be the fiscal year that

opens in the calendar year in which the vehicle is required to be listed.

(b) If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) transfers the registration plates from the listed vehicle to another classified motor vehicle pursuant to G.S. 20-64 during the listed vehicle's tax year, the vehicle to which the plates are transferred is not required to be listed or taxed until the current registration expires or is renewed.

(c) If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) surrenders the registration plates from the listed vehicle to the Division of Motor Vehicles and at the date of surrender one or more full calendar months remains in the listed vehicle's tax year, the owner may apply for a release or refund of taxes on the vehicle for the full calendar months remaining after surrender. To apply for a release or refund, the owner must present to the county tax collector the certificate received from the Division of Motor Vehicles accepting surrender of the registration plates. The county tax collector shall then multiply the amount of the taxes for the tax year on the vehicle by a fraction, the denominator of which is 12 and the numerator of which is the number of full calendar months remaining in the vehicle's tax year after the date of surrender of the registration plates. The product of the multiplication is the amount of taxes to be released or refunded. If the taxes have not been paid at the date of application, the county tax collector shall make a release of the prorated taxes and credit the owner's tax receipt with the amount of the release. If the taxes have been paid at the date of application, the county tax collector shall direct an order for a refund of the prorated taxes to the county finance officer, and the finance officer shall issue a refund to the vehicle owner.

" § 105-330.7. List of delinquents sent to Division of Motor Vehicles.

On the tenth day of each month the county tax collector shall prepare a list with the name and address of the owner and the vehicle identification number of every classified motor vehicle on which taxes remain unpaid on that date and on which taxes became due on the first day of the fourth month preceding that date. The tax collector shall mail that list to the Division of Motor Vehicles. The list shall be in such form and contain such information as the Division of Motor Vehicles may require.

" § 105-330.8. Deadlines not extended.

Except as otherwise provided in this Article, the provisions of G.S. 105-395.1 and G.S. 103-5 do not apply to deadlines established in this Article."

Sec. 2. Article 22 of Chapter 105 of the General Statutes is amended by adding a new section to read:

" § 105-329. Article inapplicable to classified motor vehicles.

The provisions of this article do not apply to the listing, appraisal, and assessment of classified motor vehicles, as defined in G.S. 105-330."

Sec. 3. G.S. 105-373 is amended by adding a new subsection (h) to read:

"(h) Relief from Collecting Taxes on Classified Motor Vehicles. The board of county commissioners may, in its discretion, relieve the tax collector of the charge of taxes on classified motor vehicles that are one year or more past due when it appears to the board that the taxes are uncollectible. This relief, when granted, shall include municipal and special district taxes charged to the collector."

Sec. 4. G.S. 20-50.2 is repealed.

Sec. 5. Article 3 of Chapter 20 of the General Statutes is amended by adding two new sections to read:

" § 20-50.3. Division to furnish county assessors registration lists.

On the tenth day of each month the Division shall send to each county assessor a list of vehicles for which registration was renewed or a new registration was obtained in that county during the second month preceding that date, with the name and address of each vehicle owner.

" § 20-50.4. Division to refuse to register vehicles on which taxes are delinquent.

Upon receiving the list of motor vehicle owners and motor vehicles sent by county tax collectors pursuant to G.S. 105-330.7, the Division shall refuse to register for the owner named in the list any vehicle identified in the list until the vehicle owner presents the Division with a paid tax receipt identifying the vehicle for which registration was refused. The Division shall not refuse to register a vehicle for a person, not named in the list, to whom the vehicle has been transferred in good faith. Where a motor vehicle owner named in the list has transferred the registration plates from the motor vehicle identified in the list to another motor vehicle pursuant to G.S. 20-64 during the first vehicle's tax year, the Division shall refuse registration of the second vehicle until the vehicle owner presents the Division with a paid tax receipt identifying the vehicle from which the plates were transferred."

Sec. 6. G.S. 20-66(d) reads as rewritten:

"(d) The Division may also provide for the issuance of license plates for motor vehicles with the dates of expiration thereof to vary from month to month so as to approximately equalize the number that expire during a registration period of one or two years. the registration year. A person may purchase a license plate for a period of two

~~years, but the Division shall not solicit, encourage, or require the purchase of a license plate for a period of more than one year."~~

Sec. 7. G.S. 20-66 is amended by adding a new subsection to read:

"(i) When the Division receives an application under subsection (a) for the renewal of registration before the current registration expires, the Division shall grant the application if it is made for the purpose of consolidating the property taxes payable by the applicant on classified motor vehicles, as defined in G.S. 105-330. The registration fee for a motor vehicle whose registration cycle is changed under this subsection shall be reduced by a prorated amount. The prorated amount is one-twelfth of the registration fee in effect when the motor vehicle's registration was last renewed multiplied by the number of full months remaining in the motor vehicle's current registration cycle, rounded to the nearest multiple of twenty-five cents (25¢)."

Sec. 8. G.S. 105-312, as amended by Chapter 34 of the 1991 Session Laws, reads as rewritten:

" § 105-312. Discovered property; appraisal; penalty.

(a) Repealed by Session Laws 1991, c. 34, s. 4.

(b) Duty to Discover and Assess Unlisted Property. -- It shall be the duty of the assessor to see that all property not properly listed during the regular listing period be listed, assessed and taxed as provided in this Subchapter. The assessor shall file reports of such discoveries with the board of commissioners in such manner as the board may require.

(c) Carrying Forward Real Property. -- At the close of the regular listing period each year, the assessor shall compare the tax lists submitted during the listing period just ended with the lists for the preceding year, and he shall carry forward to the lists of the current year all real property that was listed in the preceding year but that was not listed for the current year. When carried forward, the real property shall be listed in the name of the taxpayer who listed it in the preceding year unless, under the provisions of G.S. 105-302, it must be listed in the name of another taxpayer. Real property carried forward in this manner shall be deemed to be discovered property, and the procedures prescribed in subsection (d), below, shall be followed unless the property discovered is listed in the name of the taxpayer who listed it for the preceding year and the property is not subject to appraisal under either G.S. 105-286 or G.S. 105-287 in which case no notice of the listing and valuation need be sent to the taxpayer.

(d) Procedure for Listing, Appraising, and Assessing Discovered Property. -- Subject to the provisions of subsection (c), above, and the presumptions established by subsection (f), below, discovered property shall be listed by the assessor in the name of the person required by

G.S. 105-302 or G.S. 105-306. The discovery shall be deemed to be made on the date that the abstract is made or corrected pursuant to subsection (e) of this section. The assessor shall also make a tentative appraisal of the discovered property in accordance with the best information available to him.

When a discovery is made, the assessor shall mail a notice to the person in whose name the discovered property has been listed. The notice shall contain the following information:

- (1) The name and address of the person in whose name the property is listed;
- (2) A brief description of the property;
- (3) A tentative appraisal of the property;
- (4) A statement to the effect that the listing and appraisal will become final unless written exception thereto is filed with the assessor within 30 days from date of the notice.

Upon receipt of a timely exception to the notice of discovery, the assessor shall arrange a conference with the taxpayer to afford him the opportunity to present any evidence or argument he may have regarding the discovery. Within 15 days after the conference, the assessor shall give written notice to the taxpayer of his final decision. Written notice shall not be required, however, if the taxpayer signs an agreement accepting the listing and appraisal. In cases in which agreement is not reached, the taxpayer shall have 15 days from the date of the notice to request review of the decision of the assessor by the board of equalization and review or, if that board is not in session, by the board of commissioners. Unless the request for review by the county board is given at the conference, it shall be made in writing to the assessor. Upon receipt of a timely request for review, the provisions of G.S. 105-322 or G.S. 105-325, as appropriate, shall be followed.

(e) Record of Discovered Property. -- When property is discovered, the taxpayer's original abstract (if one was submitted) may be corrected or a new abstract may be prepared to reflect the discovery. If a new abstract is prepared, it may be filed with the abstracts that were submitted during the regular listing period, or it may be filed separately with abstracts designated 'Late Listings.' Regardless of how filed, the listing shall have the same force and effect as if it had been submitted during the regular listing period.

(f) Presumptions. -- When property is discovered and listed to a taxpayer in any year, it shall be presumed that it should have been listed by the same taxpayer for the preceding five years unless the taxpayer shall produce satisfactory evidence that the property was not in existence, that it was actually listed for taxation, or that it was not his duty to list the property during those years or some of them under

the provisions of G.S. 105-302 and G.S. 105-306. If it is shown that the property should have been listed by some other taxpayer during some or all of the preceding years, the property shall be listed in the name of the appropriate taxpayer for the proper years, but the discovery shall still be deemed to have been made as of the date that the assessor first listed it.

(g) Taxation of Discovered Property. -- When property is discovered, it shall be taxed for the year in which discovered and for any of the preceding five years during which it escaped taxation in accordance with the assessed value it should have been assigned in each of the years for which it is to be taxed and the rate of tax imposed in each such year. The penalties prescribed by ~~subsections (h) and (h1)~~ subsection (h) of this section shall be computed and imposed regardless of the name in which the discovered property is listed. If the discovery is based upon an understatement of value, quantity, or other measurement rather than an omission from the tax list, the tax shall be computed on the additional valuation fixed upon the property, and the penalties prescribed by ~~subsections (h) and (h1)~~ subsection (h) of this section shall be computed on the basis of the additional tax.

(h) Computation of Penalties. -- Having computed each year's taxes separately as provided in subsection (g), above, there shall be added a penalty of ten percent (10%) of the amount of the tax for the earliest year in which the property was not listed, plus an additional ten percent (10%) of the same amount for each subsequent listing period that elapsed before the property was discovered. This penalty shall be computed separately for each year in which a failure to list occurred; and the year, the amount of the tax for that year, and the total of penalties for failure to list in that year ~~including any penalty imposed under subsection (h1) of this section~~ shall be shown separately on the tax records; but the taxes and penalties for all years in which there was a failure to list shall be then totalled on a single tax receipt.

~~(h1) If the discovered property is a motor vehicle and the county assessor determines from records of the Division of Motor Vehicles that the owner of the vehicle falsely certified that he listed the vehicle for property taxes in violation of G.S. 20-50.2(a)(1), the county assessor shall add a penalty of \$100.00 for failure to list that vehicle in that county, which penalty shall be in addition to the penalties imposed by subsection (h). This penalty shall be imposed only for the year in which the discovery is made, regardless of the number of listing periods that elapsed before the motor vehicle was discovered, and regardless of whether the owner of the vehicle falsely certified that he paid taxes on the vehicle in previous years. The civil penalty in this subsection shall not be imposed if the owner of the vehicle has~~

~~been criminally punished under G.S. 20-50.2(c) with regard to the same failure to list.~~

(i) Collection. -- For purposes of tax collection and foreclosure, the total figure obtained and recorded as provided in ~~subsections (h) and (h1)~~ subsection (h) of this section shall be deemed to be a tax for the fiscal year beginning on July 1 of the calendar year in which the property was discovered. The schedule of discounts for prepayment and interest for late payment applicable to taxes for the fiscal year referred to in the preceding sentence shall apply when the total figure on the single tax receipt is paid. Notwithstanding the time limitations contained in G.S. 105-381, any property owner who is required to pay taxes on discovered property as herein provided shall be entitled to a refund of any taxes erroneously paid on the same property to other taxing jurisdictions in North Carolina. Claim for refund shall be filed in the county where such tax was erroneously paid as provided by G.S. 105-381.

(j) Tax Receipts Charged to Collector. -- Tax receipts prepared as required by subsections ~~(h), (h1),~~ (h) and (i) of this section for the taxes and penalties imposed upon discovered property shall be delivered to the tax collector, and he shall be charged with their collection. Such receipts shall have the same force and effect as if they had been delivered to the collector at the time of the delivery of the regular tax receipts for the current year, and the taxes charged in the receipts shall be a lien upon the property in accordance with the provisions of G.S. 105-355.

(k) Power to Compromise. -- After a tax receipt computed and prepared as required by subsections ~~(g), (h), and (h1)~~ (g) and (h) of this section has been delivered and charged to the tax collector as prescribed in subsection (j), above, the board of county commissioners, upon the petition of the taxpayer, may compromise, settle, or adjust the county's claim for taxes arising therefrom. The board of commissioners may, by resolution, delegate the authority granted by this subsection to the board of equalization and review, including any board created by resolution pursuant to G.S. 105-322(a) and any special board established by local act.

~~(l) Except for the provision in subsection (h1) which imposes an additional penalty for false certification of motor vehicle listing, the~~ Municipal Corporations. The provisions of this section shall apply to all cities, towns, and other municipal corporations having the power to tax property. Such governmental units shall designate an appropriate municipal officer to exercise the powers and duties assigned by this section to the assessor, and the powers and duties assigned to the board of county commissioners shall be exercised by the governing body of the unit. When the assessor discovers property having a

taxable situs in a municipal corporation, he shall send a copy of the notice of discovery required by subsection (d) to the governing body of the municipality together with such other information as may be necessary to enable the municipality to proceed. The governing board of a municipality may, by resolution, delegate the power to compromise, settle, or adjust tax claims granted by this subsection and by subsection (k) of this section to the county board of equalization and review, including any board created by resolution pursuant to G.S. 105-322(a) and any special board established by local act."

Sec. 9. This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 10. This act becomes effective January 1, 1993. This act shall first apply to the taxation of classified motor vehicles for the fiscal year beginning July 1, 1993, and to that end it shall apply to classified motor vehicles registered in March 1993, and classified motor vehicles whose registration expires in March 1993.

In the General Assembly read three times and ratified this the 10th day of July, 1991.

H.B. 193

CHAPTER 625

AN ACT TO ALLOW CURRITUCK COUNTY TO ESTABLISH A SPECIAL LEASH LAW DISTRICT, APPLY A LEASH LAW WITHIN THAT DISTRICT, AND LEVY A TAX IN THAT DISTRICT FOR ENFORCEMENT OF THE LEASH LAW.

The General Assembly of North Carolina enacts:

Section 1. The board of commissioners of a county may, after approval of the voters of the area of that proposed district under Section 3 of this act, create within that county one or more special districts under this act, except that no territory may be within more than one such special district. The special district shall be known as the "____ Leash Law District" or as the "____ Dog Restraint District", with the name of the county and/or geographical area and/or number of the district filled in by the ordinance. No such district shall contain less than 600 acres of surface area.

Sec. 2. (a) The board of commissioners of a county may adopt an ordinance to apply only in a special district created under this act, which requires that no owner or keeper of any dog shall permit such

dog to run at large. For the purpose of that ordinance, the following definitions apply:

- (1) "Owner or keeper" means any person or persons, or firm, association or corporation, owning, keeping, or harboring a dog;
- (2) "At large" is intended to mean off the premises of the owner or keeper and not under restraint;
- (3) "Under restraint" means:
 - a. Controlled by means of a chain, leash or other like device;
 - b. On or within a vehicle being driven or parked; or
 - c. Within a secure enclosure which prevents the dog from injuring persons; and
- (4) "Premises" means land and buildings.

(b) The ordinance may be enforced as provided for county ordinances under Chapters 67 or 153A of the General Statutes, or under any other public or local act applicable in that county.

Sec. 2.1. Notwithstanding Sections 1 and 2 of this act, a county board of commissioners may, not earlier than adoption of the resolution calling an election as provided by this act, adopt an ordinance authorized by this act, applicable only in the territory of the proposed district, with funds for enforcement of such ordinance to be paid out of general county revenues, but if the voters do not approve creation of the district as provided by this act, then the ordinance shall cease to be effective (except for violations committed prior to its expiration) at the end of the fiscal year ending after the next general county election held after adoption of the ordinance.

Sec. 3. The board of county commissioners of a county may by resolution call an election to be conducted by the board of elections of that county in a special district established under Section 1 of this act for the purpose of submitting to the voters therein the single issue of establishing the district and levying and collecting annually a special ad valorem tax on all taxable real and personal property in the special district for the purpose of enforcing an ordinance authorized by Section 2 of this act. The tax levied and collected for the purpose herein specified shall not exceed five cents (5¢) on each one hundred dollar (\$100.00) valuation of taxable property in the special district.

Sec. 4. The election shall be conducted in accordance with Chapter 163 of the General Statutes. The board of elections of a county shall determine and declare the results of said election and certify the same to the board of county commissioners of a county and the same shall thereupon be spread upon the minutes of the said board.

Sec. 5. The ballot shall contain the date of the election, the name of the proposed special district, and the following language:

- "☐ FOR creation of the _____ District and the levy of an ad valorem tax not to exceed five cents (5¢) on the one hundred dollar (\$100.00) taxable valuation for the enforcement within that district of an ordinance requiring that no owner or keeper of any dog shall permit such dog to run at large.
- ☐ AGAINST creation of the _____ District and the levy of an ad valorem tax not to exceed five cents (5¢) on the one hundred dollar (\$100.00) taxable valuation for the enforcement within that district of an ordinance requiring that no owner or keeper of any dog shall permit such dog to run at large."

The ballot shall contain the facsimile signature of the chairman of the board of elections of that county.

Sec. 6. If a majority of the qualified voters voting at said election shall vote in favor of creating the district and the levying of a tax as aforesaid for the enforcement of the ordinance, as provided by this act, the board of county commissioners of that county shall upon receipt of the certified copy of the results of said election from the board of elections adopt a resolution creating the district and shall file a copy of the said resolution so adopted with the clerk of the superior court of the county. Upon creation and establishment of the district, the board of county commissioners of the county may levy and collect an ad valorem tax on all taxable property in said district in such amount as it may deem necessary to pay expenses necessitated under Section 8 of this act, not exceeding five cents (5¢) on each one hundred dollar (\$100.00) taxable valuation of property in said district from year to year, and shall cause the same to be kept in a separate and special fund, to be used only for the enforcement within that district of the ordinance authorized by Section 2 of this act.

Sec. 7. The district shall constitute a political subdivision of the State of North Carolina, and shall be a body corporate and politic, exercising public power. The special district is a public authority under the Local Government Budget and Fiscal Control Act, but the audit required under G.S. 159-34 may be done as part of the audit of the county which established the special district, and the finance officer of that county shall be the ex officio finance officer of the special district. The board of commissioners of that county shall be the ex officio governing board of the special district.

Sec. 8. (a) The special district shall pay for the enforcement of the ordinance adopted under Section 2 of this act within that district.

The special district may contract with the county for the enforcement of that ordinance.

(b) The district may:

- (1) Sell, convey, and dispose of any real or personal property owned by the special district, acquired from any source whatsoever, in accordance with Article 12 of Chapter 160A of the General Statutes.
- (2) Erect, repair, construct, replace, and alter buildings owned by the special district, and improve, manage and maintain and control all real and personal property owned by the special district or under its supervision and control.
- (3) Employ such officers, agents, consultants, and other employees as it may desire, and determine their qualifications, duties and compensation.
- (4) Expend the funds collected by the special tax provided by this act and any and all other funds coming into the hands of the special district thereof by gift, donation, contribution, or otherwise, for the enforcement of the ordinance adopted under Section 2 of this act.
- (5) Do any and all other acts and things reasonably necessary and requisite to the purpose of the special district in accordance with the provisions of this act.

Sec. 9. This act applies to Currituck County only, and is supplemental to any private or public acts.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1991.

H.B. 450

CHAPTER 626

AN ACT TO UPDATE AND CLARIFY THE TRADEMARK REGISTRATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 80-1 reads as rewritten:

" § 80-1. *Definitions.*

(a) The term 'applicant' as used herein ~~embraces~~ means the person filing an application for registration of a trademark under this Article, his legal representatives, successors or assigns.

(b) The term 'mark' as used herein includes any trademark or service mark entitled to registration under this Article whether registered or not.

(c) The term 'person' as used herein means any individual, firm, partnership, corporation, association, union or other organization.

(d) The term 'registrant' as used herein ~~embraces~~ means the person to whom the registration of a trademark under this Article is issued, his legal representatives, successors or assigns.

(e) The term 'service mark' as used herein means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.

(f) The term 'trademark' as used herein means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods ~~made or sold~~ made, sold, or distributed by him and to distinguish them from goods made, sold, or distributed by others.

(g) The term 'use' means the bona fide use of a mark in the State of North Carolina in the ordinary course of trade, and not merely the reservation of a right to a mark. For the purposes of this Article, a mark shall be deemed to be 'used' in this State (i) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto thereto, or if the nature of the goods makes such placement impractical, then on documents associated with the goods, and such goods are currently sold or otherwise distributed in the State, and (ii) on services when it is used or displayed in the sale or advertising of services and the services are currently being rendered in this State, State, or are being offered and are available to be rendered in this State."

Sec. 2. G.S. 80-2 reads as rewritten:

"§ 80-2. *Registrability.*

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it

- (1) Consists of or comprises immoral, deceptive or scandalous matter; or
- (2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or
- (3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or
- (4) Consists of or comprises the name, signature or portrait of any living individual, except with his written consent; or
- (5) Consists of a mark which (i) when applied to the goods or services of the applicant, is merely descriptive of them or merely describes one or more of the characteristics, or is deceptively misdescriptive of them, or falsely describes the nature, function, capacity, or characteristics of them, or (ii)

when applied to the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them, or (iii) is primarily merely a surname; provided, however, that nothing in this subdivision (5) shall prevent the registration of a mark used in this State by the applicant which has become distinctive of the applicant's goods or services. The Secretary of State may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this State or elsewhere for the five years preceding the date of the filing of the application for registration; or

- (6) Consists of or comprises a mark which so resembles a mark registered in this State or a mark or trade name previously used in this State by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive."

Sec. 3. G.S. 80-3 reads as rewritten:

" § 80-3. *Application for registration.*

Subject to the limitations set forth in this Article, any person who uses a mark, or any person who controls the nature and quality of the goods or services in connection with which a mark is used by another, in this State may file in the office of the Secretary of State ~~on a form to be furnished~~ in a format to be prescribed by the Secretary of State, an application for registration of that mark setting forth, but not limited to, the following information:

- (1) The name and business address of the person applying for such registration; and, if a corporation, the state of ~~incorporation; incorporation.~~ If the application for registration relates to a mark used in connection with goods, the applicant shall list either the address of the applicant's principal place of business in North Carolina or a place of distribution and usage of such goods in this State. If the application for registration relates to a mark used in connection with services, the applicant shall list a physical location at which the services are being rendered or offered in this State;
- (2) The goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall;
- (3) The date when the mark was first used anywhere and the date when it was first used in this State by the applicant, his

predecessor in business or by another under such control of applicant; and

- (4) A statement that the applicant is the owner of the mark and that to the best of his knowledge no other person except as identified by applicant has the right to use such mark in this State either in the identical form thereof or in such near resemblance thereto as ~~might be calculated to deceive or to be mistaken therefor,~~ to be likely to cause confusion, or to cause mistake, or to deceive.

The application shall be signed and verified by the ~~applicant or applicant, by a partner, by a member of the firm firm,~~ or an officer of the corporation or association ~~applying, applying for registration.~~ In states in which a notary is not required by law to obtain a notary's stamp or seal, an original certificate of authority of the notary issued by the appropriate State agency shall be submitted with the application. If the application is signed by a person acting pursuant to a power of attorney from the applicant, an original power of attorney or a certified copy of the power of attorney shall accompany the application.

The application shall be accompanied by ~~a specimen or facsimile of such mark in triplicate,~~ three specimens of the mark as currently used, and proof of use or distribution in this State.

The application for registration shall be accompanied by a filing fee of ~~twenty-five dollars (\$25.00),~~ fifty dollars (\$50.00), payable to the Secretary of State."

Sec. 4. G.S. 80-4 reads as rewritten:

" § 80-4. *Certificate of registration.*

Upon compliance by the applicant with the requirements of this Article, the Secretary of State shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary of State and the seal of the State, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this State, the class of goods or services and a description of the goods or services on which the mark is used, a reproduction of the mark, the registration ~~date~~ date, the registration number and the term of the registration.

Any certificate of registration issued by the Secretary of State under the provisions hereof or a copy thereof duly certified by the Secretary of State shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any action or judicial proceedings in any court of this State."

Sec. 5. G.S. 80-5 reads as rewritten:

" § 80-5. *Duration and renewal.*

Registration of a mark hereunder shall be effective for a term of 10 years from the date of registration and shall be renewable for successive terms of 10 years upon application filed within six months prior to the expiration of any term. A renewal fee of ~~ten dollars (\$10.00)~~, thirty-five dollars (\$35.00), payable to the Secretary of State, shall accompany the application for renewal of the registration. Within six months following the expiration of a term of five years from the date of registration, or the last renewal of registration of the mark, the applicant shall submit a specimen showing evidence of current use of the mark and a signed statement verifying the use of such mark on a form to be furnished by the Secretary of State. Use of the form furnished by the Secretary of State is mandatory. Failure to submit this verification and specimen showing evidence of current use shall be grounds for cancellation of the registration of the mark by the Secretary of State.

The Secretary of State shall notify registrants of marks hereunder of the necessity of renewal within the year next preceding the expiration of the 10 years from the date of registration, by writing to the last known address of the registrants.

The Secretary of State shall notify registrants of marks hereunder of the necessity of submitting evidence of current use of the mark after five years from the date of registration or of the last renewal of registration of the mark, by writing to the last known address of the registrants within the year preceding the due date for such submission.

Registration of marks obtained under previous acts shall be continued in force for the full 10-year term which is in effect October 1, 1991, without the necessity of submitting evidence of current use of the mark during such term.

~~Any registration in force on January 1, 1968, shall expire 10 years from the date of the registration or of the last renewal thereof hereunder or two years after January 1, 1968, whichever is later, and may be renewed by filing an application with the Secretary of State and paying the aforementioned renewal fee therefor within six months prior to the expiration of the registration. Until so expired, such registration shall be subject to and shall be entitled to the benefits of the provisions of this Article.~~

All applications for renewals under this Article, whether of registrations made under this Article or of registrations affected under any prior act, shall be filed with the Secretary of State ~~on a form to be furnished by him~~ in a format prescribed by the Secretary of State specifying the information called for by G.S. 80-3 and shall include a statement that the mark is still in use in this ~~State~~, State, setting forth

those goods or services recited in the registration in connection with which the mark is still in use. The registration shall be renewed only as to such goods and services.

~~The Secretary of State shall notify each registrant of marks under previous acts of the date of expiration of such registrations unless renewed in accordance with the provisions of this Article, by writing to the last known address of the registrants at least six months prior to the date of expiration thereof under the provisions of this Article."~~

Sec. 6. G.S. 80-6 reads as rewritten:

" § 80-6. Assignment.

Any mark and its registration hereunder shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the Secretary of State upon the payment of a fee of ~~ten dollars (\$10.00)~~ twenty-five dollars (\$25.00), payable to the Secretary of State who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this Article shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the Secretary of State within three months after the date thereof or prior to such subsequent purchase."

Sec. 7. G.S. 80-7 reads as rewritten:

" § 80-7. Records.

The Secretary of State shall keep for public examination all assignments recorded under G.S. 80-6 and a record of all marks registered or renewed under this Article. The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a trademark or service mark:

- (1) Five dollars (\$5.00) for the certificate, and
- (2) One dollar (\$1.00) per page for copying or comparing a copy to the original.

The Secretary of State shall collect a recording fee of ten dollars (\$10.00) for recording name changes of corporate registrants and for recording transfers of the registration of any mark by merger or consolidation if the articles of merger or consolidation are records not on file in the Corporate Division of the Department of the Secretary of State."

Sec. 8. G.S. 80-8 reads as rewritten:

" § 80-8. Cancellation.

The Secretary of State shall cancel from the register:

- (1) ~~After two years from January 1, 1968, all registrations under prior acts which are more than 10 years old and not renewed in accordance with this Article;~~
- (2) Any registration concerning which the Secretary of State shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;
- (3) All registrations granted under this Article and not renewed in accordance with the provisions hereof;
- (4) Any registration concerning which a court of competent jurisdiction shall find
 - a. That the registered mark has been abandoned or has become incapable of serving as a mark;
 - b. That the registrant is not the owner of the mark;
 - c. That the registration was granted improperly;
 - d. That the registration was obtained ~~fraudulently~~,
fraudulently;
- (5) Any registration when a court of competent jurisdiction shall order cancellation ~~thereof~~, thereof;
- (6) Any registration for which compliance with the five-year evidence of use requirement of G.S. 80-5 has not been effected; or
- (7) Any registration which was obtained by means of false statements in the application for registration."

Sec. 9. G.S. 80-9 reads as rewritten:

" § 80-9. Classification.

The following general classes of goods and services are established for convenience of administration of this Article, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services for which, the mark is actually being used comprised in a single class, but in no event shall a single application include goods or services upon or for which the mark is being used which fall within different classes of goods or services. The Secretary of State shall have the right to amend the classes herein established to conform the same to the classification established for the United States Patent Office as from time to time amended.

The said classes are as follows:

(a) Goods. --

1. Raw or partly prepared materials.
2. Receptacles.
3. Baggage, animal equipments, portfolios, and pocketbooks.
4. Abrasives and polishing materials.
5. Adhesives.
6. Chemicals and chemical compositions.

7. Cordage.
8. Smokers' articles, not including tobacco products.
9. Explosives, firearms, equipments, and projectiles.
10. Fertilizers.
11. Inks and inking materials.
12. Construction materials.
13. Hardware and plumbing and steam-fitting supplies.
14. Metals and metal castings and forgings.
15. Oils and greases.
16. Protective and decorative coatings.
17. Tobacco products.
18. Medicines and pharmaceutical preparations.
19. Vehicles.
20. Linoleum and oiled cloth.
21. Electrical apparatus, machines, computer hardware, video tapes, and supplies.
22. Games, toys, and sporting goods.
23. Cutlery, machinery, and tools, and parts thereof.
24. Laundry appliances and machines.
25. Locks and safes.
26. Measuring and scientific ~~appliances,~~ appliances and computer software.
27. Horological instruments.
28. Jewelry and precious-metal ware.
29. Brooms, brushes, and dusters.
30. Crockery, earthenware, and porcelain.
31. Filters and refrigerators.
32. Furniture and upholstery.
33. Glassware.
34. Heating, lighting, and ventilating apparatus.
35. Belting, hose, machinery packing, and nonmetallic tires.
36. Musical instruments and supplies.
37. Paper and stationery.
38. Prints and publications.
39. Clothing.
40. Fancy goods, furnishings, and notions.
41. Canes, parasols, and umbrellas.
42. Knitted, netted and textile fabrics, and substitutes therefor.
43. Thread and yarn.
44. Dental, medical, and surgical appliances.
45. Soft drinks and carbonated waters.
46. Foods and ingredients of foods.
47. Wines.
48. Malt beverages and liquors.

- 49. Distilled alcoholic liquors.
- 50. Merchandise not otherwise classified.
- 51. Cosmetics and toilet preparations.
- 52. Detergents and soaps.

(b) Services. --

- 100. Miscellaneous.
- 101. Advertising and business.
- 102. Insurance and financial.
- 103. Construction and repair.
- 104. Communications.
- 105. Transportation and storage.
- 106. Material treatment.
- 107. Education and entertainment."

Sec. 10. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 10th day of July, 1991.

H.B. 482

CHAPTER 627

AN ACT TO REWRITE THE LAWS ON THIRD PARTY ADMINISTRATORS.

The General Assembly of North Carolina enacts:

Section 1. Article 56 of Chapter 58 of the General Statutes is amended by adding the following new sections:

" § 58-56-2. *Definitions.*

The following definitions apply in this Article:

- (1) Affiliate. Any person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.
- (2) Control. Defined in G.S. 58-19-5(2).
- (3) Insurance. Any coverage offered or provided by an insurer.
- (4) Insurer. A person who undertakes to provide life or health insurance or benefits in this State that are subject to this Chapter. The term 'insurer' does not include a bona fide employee benefit plan established by an employer, an employee organization, or both, for which the insurance laws of this State are preempted pursuant to the Employee Retirement Income Security Act of 1974.
- (5) Third party administrator. A person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State, or residents of another state from

offices in this State, in connection with life or health insurance or annuities, except any of the following:

- a. An employer on behalf of its employees or the employees of one or more of its affiliates.
- b. A union on behalf of its members.
- c. An insurer that is licensed under Articles 1 through 67 of this Chapter or that is acting as an insurer with respect to a policy lawfully issued and delivered by it and pursuant to the laws of a state in which the insurer is licensed to write insurance.
- d. An agent or broker who is licensed by the Commissioner to sell life or health insurance and whose activities are limited exclusively to the sale of insurance.
- e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.
- f. A trust and its trustees, agents, and employees acting pursuant to the trust established in conformity with 29 U.S.C. § 186.
- g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code and its trustees and employees acting pursuant to the trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code.
- h. A financial institution subject to supervision or examination by federal or state banking authorities, or a mortgage lender, to the extent the financial institution or mortgage lender collects and remits premiums to licensed insurance agents or authorized insurers in connection with loan payments.
- i. An attorney-at-law who adjusts or settles claims in the normal course of business as an attorney-at-law and who does not collect charges or premiums in connection with life or health insurance or annuities.
- j. An adjuster licensed by the Commissioner whose activities are limited to adjustment of claims.
- k. A person who acts solely as a TPA of one or more bona fide employee benefit plans established by an employer, an employee organization, or both, for which the insurance laws of this State are preempted pursuant to the Employee Income Security Act of 1974. The person shall comply with the requirements of G.S. 58-56-51(f).

1. A person licensed as a managing general agent in this State, whose activities are limited exclusively to the scope of activities conveyed under the license.
- (6) TPA. A third party administrator.
- (7) Underwriting. This term includes the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer, the planning and coordination of an insurance program, and the ability to procure bonds and excess insurance.

" § 58-56-6. *Written agreement necessary.*

(a) No TPA may act as a TPA without a written agreement between the TPA and the insurer. The written agreement shall be retained as part of the official records of both the insurer and the TPA for the duration of the agreement and for five years thereafter. The agreement shall contain all provisions required by this Article, to the extent those requirements apply to the functions performed by the TPA.

(b) The agreement shall include a statement of duties that the TPA is expected to perform on behalf of the insurer and the kinds of insurance the TPA is to be authorized to administer. The agreement shall provide for underwriting or other standards pertaining to the business underwritten by the insurer.

(c) The insurer or TPA may, with written notice, terminate the agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the TPA during the pendency of any dispute regarding the cause for termination of the agreement. The insurer must fulfill any lawful obligations with respect to policies affected by the agreement, regardless of any dispute between the insurer and the TPA.

" § 58-56-11. *Payment to TPA.*

If an insurer uses the services of a TPA, the payment to the TPA of any premiums or charges for insurance by or on behalf of the insured party is considered payment to the insurer. The payment of return premiums or claim payments forwarded by the insurer to the TPA is not considered payment to the insured party or claimant until the payments are received by the insured party or claimant. This section does not limit any right of the insurer against the TPA resulting from the failure of the TPA to make payments to the insurer, insured parties, or claimants.

" § 58-56-16. *Records to be kept.*

(a) Every TPA shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance

with prudent standards of insurance record keeping and must be maintained for a period of at least five years after the date of their creation.

(b) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. The Commissioner shall keep confidential any trade secrets contained in those books and records, including the identity and addresses of policyholders and certificate holders, except that the Commissioner may use the information in any judicial or administrative proceeding instituted against the TPA.

(c) The insurer shall own the records generated by the TPA pertaining to the insurer, but the TPA shall retain the right to continuing access to books and records to permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the insurer.

(d) In the event the insurer and the TPA cancel their agreement, notwithstanding the provisions of subsection (a) of this section, the TPA may, by written agreement with the insurer, transfer all records to a new TPA rather than retain them for five years. In this case, the new TPA shall acknowledge, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection (a) of this section.

" § 58-56-21. Approval of advertising.

A TPA may use only the advertising pertaining to the business underwritten by an insurer that has been approved in writing by the insurer in advance of its use.

" § 58-56-26. Responsibilities of the insurer.

(a) If an insurer uses the services of a TPA, the insurer is responsible for determining the benefits, premium rates, underwriting criteria, and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters must be provided, in writing, by the insurer to the TPA. The responsibilities of the TPA as to any of these matters shall be set forth in the agreement between the TPA and the insurer.

(b) It is the sole responsibility of the insurer to provide for competent administration of its programs.

(c) In cases where a TPA administers benefits for more than 100 certificate holders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the TPA. At least one semiannual review shall be an on-site audit of the operations of the TPA.

" § 58-56-31. Premium collection and payment of claims.

(a) All insurance charges or premiums collected by a TPA on behalf of or for an insurer, and the return of premiums received from

that insurer, shall be held by the TPA in a fiduciary capacity. These funds shall be immediately remitted to the person entitled to them or shall be deposited promptly in a fiduciary account established and maintained by the TPA in a federally or State insured financial institution. The agreement between the TPA and the insurer shall require the TPA to periodically render an accounting to the insurer detailing all transactions performed by the TPA pertaining to the business underwritten by the insurer.

(b) If charges or premiums deposited in a fiduciary account have been collected on behalf of or for one or more insurers, the TPA shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each insurer. The TPA shall keep copies of all the records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to the deposits and withdrawals.

(c) The TPA shall not pay any claim by withdrawals from a fiduciary account in which premiums or charges are deposited. Withdrawals from this account shall be made only as provided in the agreement between the TPA and the insurer. The agreement shall address, but not be limited to, the following:

- (1) Remittance to an insurer entitled to remittance.
- (2) Deposit in an account maintained in the name of the insurer.
- (3) Transfer to and deposit in a claims-paying account, with claims to be paid as provided in subsection (d) of this section.
- (4) Payment to a group policyholder for remittance to the insurer entitled to the remittance.
- (5) Payment to the TPA of its commissions, fees, or charges.
- (6) Remittance of a return premium to the person entitled to the return premium.

(d) All claims paid by the TPA from funds collected on behalf of or for an insurer shall be paid only on drafts or checks of and as authorized by the insurer.

" § 58-56-36. Compensation to the TPA.

A TPA shall not enter into any agreement or understanding with an insurer that makes the amount of the TPA's commissions, fees, or charges contingent upon savings effected in the adjustment, settlement, and payment of losses covered by the insurer's obligations. This section does not prohibit a TPA from receiving performance-based compensation for providing hospital or other auditing services and does not prevent the compensation of a TPA from being based on premiums or charges collected or the number of claims paid or processed.

" § 58-56-41. Notice to covered individuals; disclosure of charges and fees.

(a) When the services of a TPA are used, the TPA shall provide a written notice approved by the insurer to covered individuals advising them of the identity of, and relationship among, the TPA, the policyholder, and the insurer.

(b) When a TPA collects funds, the reason for collection of each item must be identified to the insured party and each item must be shown separately from any premium. Additional charges may not be made for services to the extent the services have been paid for by the insurer.

(c) The TPA shall disclose to the insurer all charges, fees and commissions received from all services in connection with the provision of administrative services for the insurer, including any fees or commissions paid by insurers providing reinsurance.

" § 58-56-46. Delivery of materials to covered individuals.

Any policies, certificates, booklets, termination notices, and other written communications delivered by the insurer to the TPA for delivery to insured parties or covered individuals shall be delivered by the TPA promptly after receipt of instructions from the insurer to deliver them.

" § 58-56-51. License required.

(a) No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid TPA license issued by the Commissioner. Licenses shall be renewed annually.

(b) Each application for the issuance or renewal of a license shall be made upon a form prescribed by the Commissioner and shall be accompanied by a nonrefundable filing fee of one hundred dollars (\$100.00) and evidence of maintenance of a fidelity bond, errors and omissions liability insurance, or other security, of a type and in an amount to be determined by rules of the Commissioner. Applications for issuance of licenses shall include or be accompanied by the following information and documents:

- (1) All organizational documents of the TPA, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, or trust agreement, any other applicable documents, and all amendments to these documents.
- (2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the TPA.
- (3) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of affairs of the TPA, including all (i) members of the board of directors, board of trustees, executive

- committee, or other governing board or committee, (ii) the principal officers in the case of a corporation or the partners or members in the case of a partnership or association, (iii) all shareholders holding directly or indirectly ten percent (10%) or more of the voting securities of the TPA, and (iv) any other person who exercises control or influence over the affairs of the TPA.
- (4) Annual financial statements or reports for the two most recent years that prove that the applicant is solvent and any other information the Commissioner may require in order to review the current financial condition of the applicant.
- (5) A general description of the business operations, including information on staffing levels and activities proposed in this State and nationwide. The description must provide details setting forth the TPA's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting.
- (6) If the applicant will be managing the solicitation of new or renewal business, evidence that it employs or has contracted with an agent licensed by this State for soliciting and taking applications. Any applicant that intends to directly solicit insurance contracts or to otherwise act as an insurance agent must provide proof of having a license as an insurance agent in this State.
- (7) Any other pertinent information required by rules of the Commissioner.

The information required by subdivisions (1) through (7) of this subsection, including any trade secrets, shall be kept confidential; provided that the Commissioner may use that information in any judicial or administrative proceeding instituted against the TPA. Applications for renewals of licenses shall include or be accompanied by any changes in the information required by subdivisions (1) through (7) of this subsection.

(c) Each applicant shall make available for inspection by the Commissioner copies of all contracts with insurers or other persons using the services of the TPA.

(d) The Commissioner may refuse to issue a license if the Commissioner determines that the TPA, or any individual responsible for the conduct of affairs of the TPA as defined in subdivision (b)(3) of this section, is not competent, trustworthy, financially responsible in accordance with subsection (b) of this section, or of good personal and business reputation, or has had an insurance or a TPA license denied, suspended, or revoked for cause by any state.

(c) A TPA is not required to be licensed as a TPA in this State if all of the following conditions are met:

- (1) The TPA's principal place of business is in another state.
- (2) The TPA is not soliciting business as a TPA in this State.
- (3) In the case of any group policy or plan of insurance serviced by the TPA, no more than either five percent (5%) or 100 certificate holders, whichever is fewer, reside in this State.

(f) A person is not required to be licensed as a TPA in this State if the person provides services exclusively to one or more bona fide employee benefit plans each of which is established by an employer, an employee organization, or both, and for which the insurance laws of this State are preempted pursuant to the Employee Retirement Income Security Act of 1974. Persons who are not required to be licensed shall register with the Commissioner annually, verifying their status as described in this subsection.

(g) A TPA shall notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a license in this State, within 10 business days after the change.

(h) No bonding shall be required by the Commissioner of any TPA whose business is restricted solely to benefit plans that are either fully insured by an authorized insurer or that are bona fide employee benefit plans established by an employer, any employee organization, or both, for which the insurance laws of this State are preempted pursuant to the Employee Retirement Income Security Act of 1974.

"§ 58-56-56. Waiver of application for license.

Upon request from a TPA, the Commissioner may waive the application requirements of G.S. 58-56-51(b) if the TPA has a valid license as a TPA issued in a state that has standards for TPAs that are at least as stringent as those contained in this Article.

"§ 58-56-61. Reserved.

"§ 58-56-66. Grounds for suspension or revocation of license.

(a) The Commissioner shall, after notice and opportunity for hearing, suspend or revoke the license of a TPA if the Commissioner finds that either of the following apply to the TPA:

- (1) The TPA is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to insured persons or the public.
- (2) The TPA has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final.

(b) The Commissioner may, after notice and opportunity for hearing, suspend or revoke the license of a TPA if the Commissioner finds that any of the following apply to the TPA:

- (1) The TPA has violated a rule or an order of the Commissioner or any provision of this Chapter.
- (2) The TPA has refused to be examined or to produce its accounts, records, and files for examination, or any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to that examination, when required by the Commissioner.
- (3) The TPA has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the TPA to secure full payment or settlement of the claims.
- (4) The TPA is an affiliate of or under the same general management, interlocking directorate, or ownership as another TPA or insurer that unlawfully transacts business in this State without having a license.
- (5) The TPA at any time fails to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the Commissioner at the time of the application.
- (6) The TPA has been convicted of, or has entered a plea of guilty or *nolo contendere* to, a felony without regard to whether judgment was withheld.
- (7) The TPA is under suspension or revocation in another state.

(c) The Commissioner may without advance notice or hearing immediately suspend the license of any TPA if the Commissioner finds that any of the following apply to the TPA:

- (1) The TPA is insolvent or financially impaired. 'Financially impaired' means that the TPA is unable or potentially unable to fulfill its contractual obligations.
- (2) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced in any state.
- (3) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this State."

Sec. 2. G.S. 58-56-1, 58-56-10, 58-56-15, 58-56-20, 58-56-25, 58-56-30, 58-56-35, 58-56-40, 58-56-45, 58-56-50, 58-56-55, and 58-56-60 are repealed.

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 10th day of July, 1991.

H.B. 852

CHAPTER 628

AN ACT TO MAKE UNLAWFUL THE SALE OF CIGARETTES, CIGARETTE WRAPPING PAPERS, AND SMOKELESS TOBACCO PRODUCTS TO ANY PERSON WHO IS LESS THAN EIGHTEEN YEARS OLD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313 reads as rewritten:

" § 14-313. *Selling cigarettes to minors.*

If any person shall knowingly sell, give away or otherwise dispose of, directly or indirectly, cigarettes, or tobacco in the form of cigarettes, or cut tobacco in any form or shape which may be used or intended to be used as a substitute for cigarettes, or cigarette wrapping papers, or a smokeless tobacco product to any minor under the age of ~~17~~ 18 years, or if any person shall knowingly aid, assist or abet any other person in selling such articles to such minor, he shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment for not more than six months, or both. As used in this section, 'smokeless tobacco product' means (i) loose tobacco or a flat compressed cake of tobacco that may be chewed or held in the mouth or (ii) shredded, powdered, or pulverized tobacco that may be inhaled through the nostrils, chewed, or held in the mouth."

Sec. 2. This act becomes effective October 1, 1991, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 1991.

H.B. 924

CHAPTER 629

AN ACT TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DETERMINE WHETHER A PROPOSED AIR QUALITY PERMIT IS CONSISTENT WITH LOCAL ZONING AND SUBDIVISION ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.108 reads as rewritten:

" § 143-215.108. *Control of sources of air pollution; permits required.*

(a) After the effective date applicable to any air quality or emission control standards established pursuant to G.S. 143-215.107, no person

shall do any of the following things or carry out any of the following activities which contravene or will be likely to contravene such standards until or unless such person shall have applied for and shall have received from the Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

- (1) Establish or operate any air contaminant source;
- (2) Build, erect, use or operate any equipment which may result in the emission of air contaminants or which is likely to cause air pollution;
- (3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted;
- (4) Enter into a [an] irrevocable contract for the construction and installation of any air-cleaning device, or allow or cause such device to be constructed, installed, or operated.

(b) The Commission shall act upon all applications for permits so as to effectuate the purpose of this section, by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air from any additional or enlarged sources.

(c) The Commission shall have the power:

- (1) To grant and renew a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this section;
- (2) To grant and renew any temporary permit for such period of time as the Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;
- (3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected;
- (4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;
- (5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit;
- (5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:
 - a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and

- b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

As used in this subdivision, the words 'affiliate,' 'parent,' and 'subsidiary' have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition):

- (6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in writing;
- (7) To prohibit any stationary source within the State from emitting any air pollutant in amounts which will prevent attainment or maintenance by any other state of any national ambient air quality standard, or interference with measures required to be included in the applicable implementation plan for any other state to prevent deterioration of air quality or protect visibility.

(d) The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. A permit application may not be deemed complete unless it is accompanied by a copy of the request for determination as provided in subsection (f) of this section that bears a date of receipt entered by the clerk of the local government and until the 15-day period for issuance of a determination has elapsed. If the Commission fails to act on an application for a permit deemed complete within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved.

(e) A permit applicant or permittee who is dissatisfied with a decision of the commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review.

(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the

land on which the facility and its appurtenances are to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of construction or operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

(c) (g) Any person who is required to hold a permit under this section shall submit to the Department a written description of his current and projected plans to reduce the emission of air contaminants under such permit by source reduction or recycling. The written description shall accompany the payment of the annual permit fee. The written description shall also accompany any application for a new permit, or for modification of an existing permit, under this section. The written description required by this subsection shall not be considered part of a permit application and shall not serve as the basis for the denial of a permit or permit modification."

Sec. 2. This act becomes effective 1 October 1991 and applies to applications for permits received on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 1991.

H.B. 1037

CHAPTER 630

AN ACT TO REFORM THE SMALL EMPLOYER GROUP
ACCIDENT AND HEALTH INSURANCE MARKETPLACE IN
THE STATE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 50 of Chapter 58 of the General Statutes is amended by adding the following sections to read:

" § 58-50-100. Title and reference.

This section and G.S. 58-50-105 through G.S. 58-50-150 are known and may be cited as the North Carolina Small Employer Group Health Coverage Reform Act, referred to in those sections as 'this Act'.

" § 58-50-105. Purpose and intent.

The purpose and intent of this Act is to promote the availability of accident and health insurance coverage to small employers, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules for continuity of coverage for employers and covered individuals, and to improve the efficiency and fairness of the small group accident and health insurance marketplace.

" § 58-50-110. Definitions.

As used in this Act:

- (1) 'Actuarial certification' means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the Commissioner that a small employer carrier is in compliance with the provisions of G.S. 58-50-130, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.
- (2) 'Base premium rate' means for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business, by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

- (3) 'Basic health care plan' means a health care plan for small employers that is lower in cost than a standard health care plan and is required to be offered by all small employer carriers pursuant to G.S. 58-50-125 and approved by the Commissioner in accordance with G.S. 58-50-125.
- (4) 'Board' means the board of directors of the Pool.
- (5) 'Carrier' means any person that provides one or more health benefit plans in this State, including a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization (HMO), and a multiple employer welfare arrangement.
- (6) 'Case characteristics' means demographic or other objective characteristics of a small employer, as determined by a small employer carrier, that are considered by the small employer carrier in the determination of premium rates for the small employer; but does not mean claim experience, health status, and duration of coverage since issue.
- (7) 'Class of business' means all or a distinct grouping of small employers as shown on the records of a small employer carrier.
- (8) 'Committee' means the Small Employer Carrier Committee as created by G.S. 58-50-120.
- (9) 'Dependent' means the spouse or child of an eligible employee, subject to applicable terms of the health care plan covering the employee.
- (10) 'Eligible employee' means an employee who works for a small employer on a full-time basis, with a normal work week of 30 or more hours, including a sole proprietor, a partner or a partnership, or an independent contractor, if included as an employee under a health care plan of a small employer; but does not include employees who work on a part-time, temporary, or substitute basis.
- (11) 'Health benefit plan' means any accident and health insurance policy or certificate; nonprofit hospital or medical service corporation contract; health, hospital, or medical service corporation plan contract; HMO subscriber contract; plan provided by a MEWA or plan provided by another benefit arrangement, to the extent permitted by ERISA, subject to G.S. 58-50-115. Health benefit plan does not mean accident only, specified disease only, fixed indemnity, credit, or disability insurance; coverage of Medicare services pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; dental only or vision only insurance; coverage

issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

- (12) 'Impaired insurer' has the same meaning as prescribed in G.S. 58-62-20(6) or G.S. 58-62-16(8).
- (13) 'Index rate' means, for each class of business as to a rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.
- (14) 'Late enrollee' means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period provided under the terms of the health benefit plan; provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee or dependent shall not be considered a late enrollee if:

 - a. The individual:

 - 1. Was covered under another employer health benefit plan at the time the individual was eligible to enroll;
 - 2. Stated, at the time of the initial enrollment, that coverage under another employer health benefit plan was the reason for declining enrollment;
 - 3. Has lost coverage under another employer health benefit plan as a result of termination of employment, the termination of the other plan's coverage, death of a spouse, or divorce; and
 - 4. Requests enrollment within 30 days after termination of coverage provided under another employer health benefit plan;
 - b. The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or
 - c. A court has ordered coverage be provided for a spouse or minor child under a covered employee's health benefit plan and request for enrollment is made within 30 days after issuance of the court order.
- (15) 'New business premium rate' means, for each class of business as to a rating period, the lowest premium rate charged, offered, or that could have been charged by a small employer carrier to small employers with similar case

- characteristics for newly issued health benefit plans with the same or similar coverage.
- (16) 'Pool' means the North Carolina Small Employer Health Reinsurance Pool created in G.S. 58-50-150.
- (17) 'Preexisting-conditions provision' means a policy provision that limits or excludes coverage for charges or expenses incurred during a specified period following the insured's effective date of coverage, for a condition that, during a specified period immediately preceding the effective date of coverage, had manifested itself in a manner that would cause an ordinary prudent person to seek diagnosis, care, or treatment, or for which medical advice, diagnosis, care, or treatment was recommended or received as to that condition or as to pregnancy existing on the effective date of coverage.
- (18) 'Premium' includes insurance premiums or other fees charged for a health benefit plan, including the costs of benefits paid or reimbursements made to or on behalf of persons covered by the plan.
- (19) 'Rating period' means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.
- (20) 'Risk-assuming carrier' means a small employer carrier electing to comply with the requirements set forth in G.S. 58-50-140.
- (21) 'Reinsuring carrier' means a small employer carrier electing to comply with the requirements set forth in G.S. 58-50-145.
- (22) 'Small employer' means any person actively engaged in business that, on at least fifty percent (50%) of its working days during the preceding year, employed no more than 25 eligible employees and not less than three eligible employees, the majority of whom are employed within this State. Small employer includes companies that are affiliated companies, as defined in G.S. 58-19-5(1) or that are eligible to file a combined tax return under Chapter 105 of the General Statutes or under the Internal Revenue Code. Except as otherwise provided, the provisions of this Act that apply to a small employer shall continue to apply until the plan anniversary following the date the employer no longer meets the requirements of this section.

- (23) 'Small employer carrier' means any carrier that offers health benefit plans covering eligible employees of one or more small employers.
- (24) 'Standard health care plan' means a health care plan for small employers required to be offered by all small employer carriers under G.S. 58-50-125 and approved by the Commissioner in accordance with G.S. 58-50-125.

" § 58-50-112. *Affiliated companies; HMOs.*

For the purposes of this Act, companies that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one carrier except that any insurance company, hospital service plan, or medical service plan that is an affiliate of an HMO located in North Carolina or any HMO located in North Carolina that is an affiliate of an insurance company, a health service corporation, or a medical service corporation may treat the HMO as a separate carrier and each HMO that operates only one HMO in a service area of North Carolina may be considered a separate carrier.

" § 58-50-113. *Distinct groupings.*

(a) A distinct grouping may only be established by a small employer carrier on the basis that the applicable health benefit plans:

- (1) Are marketed and sold through individuals and organizations that are not participating in the marketing or sale of other distinct groupings of small employers for the small employer carrier;
- (2) Have been acquired from another small employer carrier as a distinct grouping of plans; or
- (3) Are provided through an association with membership of not less than 10 small employers that has been formed for purposes other than obtaining insurance.

(b) A small employer carrier may establish no more than two additional groupings under subdivision (a)(1), (2), or (3) of this section on the basis of underwriting criteria that are expected to produce substantial variation in the health care costs.

(c) The Commissioner may approve the establishment of additional distinct groupings upon application to the Commissioner and the Commissioner's determination that the action would enhance the efficiency and fairness of the small employer marketplace.

" § 58-50-115. *Health benefit plans subject to Act.*

(a) A health benefit plan is subject to this Act if it provides health benefits for small employers and if either of the following conditions are met:

- (1) Any part of the premiums or benefits is paid by a small employer or any covered individual is reimbursed, whether through wage adjustments or otherwise, by a small

employer for any portion of the premium; or for which the small employer has permitted payroll deduction for the covered individual, whether or not the coverage is issued through a group or individual policy of insurance, and whether or not the small employer pays any part of the premium.

- (2) The health benefit plan is treated by the employer or any of the covered individuals as part of a plan or program for the purpose of section 162 or section 106 of the Internal Revenue Code.

(b) The provisions of G.S. 58-51-95(f) do not apply to individual accident and health insurance policies or contracts to the extent subject to the provisions of this Act.

" § 58-50-120. *Small Employer Carrier Committee.*

(a) The Commissioner shall appoint the Small Employer Carrier Committee with fair representation of (i) risk-assuming carriers and reinsuring carriers; (ii) the insurance agent and small employer communities; and (iii) consumers who are served by plans covered by this Act. Two-thirds of the Committee shall be appointed from among representatives of small employer carriers.

(b) Subject to the Commissioner's approval, the Committee shall recommend the form and level of coverages to be made available by small employer carriers in accordance with the provisions of G.S. 58-50-125(a). The Committee shall recommend benefit levels, cost-sharing factors, exclusions, and limitations for the basic and standard health care plans. One basic health care plan and one standard health care plan shall contain benefit and cost-sharing levels that are consistent with the basic method of operation and the benefit plans of HMOs, including any restrictions imposed by federal law. The Committee shall submit the plans to the Commissioner for approval within 180 days after the Committee's appointment according to this section. The plans may include cost containment features such as: utilization review of health care services, including review of medical necessity of hospital and physician services; case management benefit alternatives; selective contracting with hospitals, physicians, and other health care providers; reasonable benefit differentials applicable to participating and nonparticipating providers; and other managed care provisions.

(c) To assure the broadest availability of health benefit plans to small employers, the Committee shall recommend for the Commissioner's approval, market conduct and other requirements for carriers, agents, brokers, and third-party administrators, including requirements developed as a result of a request by the Commissioner, relating to the following:

- (1) Registration by each carrier with the Department of its intention to be a small employer carrier under this Act.
- (2) Publication by the Department, the Committee, or the Pool of a list of all small employer carriers, including a potential requirement applicable to agents, brokers, third-party administrators, and carriers that no health benefit plan may be sold to a small employer by a carrier not so identified as a small employer carrier.
- (3) The availability of a broadly publicized toll-free telephone number for access by small employers to information concerning this Act.
- (4) To the extent deemed to be necessary by the Committee to assure the fair distribution of high-risk individuals and groups among carriers, periodic reports by carriers, agents, brokers, and third-party administrators about health benefit plans issued; provided that reporting requirements shall be limited to information concerning case characteristics and numbers of health benefit plans in various categories marketed or issued to small employers.
- (5) Registration by agents, brokers, and third-party administrators of their intention to be such for health benefit plans marketed to small employers under this Act.
- (6) Methods concerning periodic demonstration by small employer carriers, agents, brokers, and third-party administrators that they are marketing and issuing health benefit plans to small employers in fulfillment of the purposes of this Act.
- (7) Establishing standards for those conditions under which a carrier would not be required to write business received from a particular agent or broker.

(d) Within three years after September 1, 1991, the Committee shall conduct a study of the effectiveness of the provisions of this Act, recommend further improvements to achieve greater stability, accessibility, and affordability in the small employer marketplace, and submit it to the Commissioner.

" § 58-50-125. Health care plans; formation; approval; offerings.

(a) To improve the availability and affordability of health benefits coverage for small employers, the Committee shall recommend to the Commissioner two plans of coverage, one of which shall be a basic health care plan and the second of which shall be a standard health care plan. Each plan of coverage shall be in two forms, one of which shall be in the form of insurance and the second of which shall be consistent with the basic method of operation and benefit plans of HMOs, including federally qualified HMOs. On or before January 1,

1992, the Committee shall file a progress report with the Commissioner. The Committee shall submit the recommended plans to the Commissioner for approval within 180 days after the appointment of the Committee under G.S. 58-50-120. The Committee shall take into consideration the levels of health benefit plans provided in North Carolina, and appropriate medical and economic factors, and shall establish benefit levels, cost sharing, exclusions, and limitations. Notwithstanding subsection (c) of this section, in developing and approving the plans, the Committee and the Commissioner shall give due consideration to cost-effective and life-saving health care services and to cost-effective health care providers. The Committee shall file with the Commissioner its findings and recommendations, and reasons for the findings and recommendations, if it does not provide for coverage by any type of health care provider specified in G.S. 58-50-30. The recommended plans may include cost containment features such as, but not limited to: preferred provider provisions; utilization review of medical necessity of hospital and physician services; case management benefit alternatives; or other managed care provisions.

(b) After the Commissioner's approval of the plans submitted by the Committee under subsection (a) of this section and in lieu of any contrary procedure established by this Chapter, any small employer carrier may certify to the Commissioner, in the form and manner prescribed by the Commissioner, that the basic and standard health care plans filed by the carrier are in substantial compliance with the provisions of the corresponding approved Committee plans. Upon receipt by the Commissioner of the certification, the carrier may use the certified plans unless their use is disapproved by the Commissioner.

(c) The plans developed under this section are not required to provide coverage that meets the requirements of other provisions of this Chapter that mandate either coverage or the offer of coverage by the type or level of health care services or health care provider.

(d) Within 180 days after the Commissioner's approval under subsection (b) of this section, every small employer carrier shall, as a condition of transacting business in this State, offer small employers at least one basic and one standard health care plan. Every small employer that elects to be covered under such a plan and agrees to make the required premium payments and to satisfy the other provisions of the plan shall be issued such a plan by the small employer carrier. The premium payment requirements used in connection with basic and standard health care plans may address the potential credit risk of small employers that elect coverage in accordance with this subsection by means of payment security

provisions that are reasonably related to the risk and are uniformly applied.

(e) No small employer carrier is required to offer coverage or accept applications under subsection (d) of this section:

- (1) From a group already covered under a health benefit plan except for coverage that is to begin after the group's anniversary date, but this subsection shall not be construed to prohibit a group from seeking coverage or a small employer carrier from issuing coverage to a group before its anniversary date; or
- (2) If the Commissioner determines that acceptance of an application or applications would result in the carrier being declared an impaired insurer; or
- (3) To groups of fewer than five eligible employees where the small employer carrier does not use preexisting-conditions provisions in all health benefit plans it issues to any small employers.

If a small employer carrier who does not use preexisting conditions chooses to market to groups of less than five, then it shall immediately notify the Commissioner and the Board, and it shall do so consistently and equally to all such small employer groups.

(f) Every small employer carrier shall fairly market the basic and standard health care plan to all small employers in the geographic areas in which the carrier makes coverage available or provides benefits.

(g) No HMO operating as either a risk-assuming carrier or a reinsuring carrier is required to offer coverage or accept applications under subsection (d) of this section in the case of any of the following:

- (1) To a group, where the group is not physically located in the HMO's approved service areas;
- (2) To an employee, where the employee does not reside within the HMO's approved service areas;
- (3) Within an area, where the HMO reasonably anticipates, and demonstrates to the Commissioner's satisfaction, that it will not have the capacity within that area and its network of providers to deliver services adequately to the enrollees of those groups because of its obligations to existing group contract holders and enrollees.

An HMO that does not offer coverage pursuant to subdivision (3) of this subsection may not offer coverage in the applicable area to new employer groups with more than 25 eligible employees until the later of 90 days after that closure or the date on which the carrier notifies the Commissioner that it has regained capacity to deliver services to small employers.

(h) The provisions of subsections (b), (d), and (g) and subdivision (e)(2) of this section apply to every health benefit plan delivered, issued for delivery, renewed, or continued in this State or covering persons residing in this State on or after the date the plan becomes operational, as determined by the Commissioner. For purposes of this subsection, the date a health benefit plan is continued is the anniversary date of the issuance of the health benefit plan.

" § 58-50-130. Required health care plan provisions.

(a) Health benefit plans covering small employers are subject to the following provisions:

- (1) Except in the case of a late enrollee, any preexisting-conditions provision may not limit or exclude coverage for a period beyond 12 months following the insured's effective date of coverage and may only relate to conditions manifesting themselves in a manner that would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment; or for which medical advice, diagnosis, care, or treatment was recommended or received during the 12 months immediately before the effective date of coverage or as to a pregnancy existing on the effective date of coverage.
- (2) In determining whether a preexisting-conditions provision applies to an eligible employee or to a dependent, all health benefit plans shall credit the time the person was covered under a previous group health benefit plan if the previous coverage was continuous to a date not more than 30 days before the effective date of the new coverage, exclusive of any applicable waiting period under the plan.
- (3) The health benefit plan is renewable with respect to all eligible employees or dependents at the option of the policyholder or contract holder except:
 - a. For nonpayment of the required premiums by the policyholder or contract holder;
 - b. For fraud or misrepresentation of the policyholder or contract holder or, with respect to coverage of individual enrollees, the enrollees, or their representatives;
 - c. For noncompliance with plan provisions that have been approved by the Commissioner;
 - d. When the number of enrollees covered under the plan is less than the number of insureds or percentage of enrollees required by participation requirements under the plan; or

- e. When the policyholder or contract holder is no longer actively engaged in the business in which it was engaged on the effective date of the plan.
- f. When the small employer carrier stops writing new business in the small employer market, if:
 - 1. It provides notice to the Department and either to the policyholder, contract holder, or employer, of its decision to stop writing new business in the small employer market; and
 - 2. It does not cancel health benefit plans subject to this Act for 180 days after the date of the notice required under paragraph 1; and for that business of the carrier that remains in force, the carrier shall continue to be governed by this Act with respect to business conducted under this Act.

A small employer carrier that stops writing new business in the small employer market in this State after January 1, 1992, shall be prohibited from writing new business in the small employer market in this State for a period of five years from the date of notice to the Commissioner. In the case of an HMO doing business in the small employer market in one service area of this State, the rules set forth in this subdivision shall apply to the HMO's operations in the service area, unless the provisions of G.S. 58-50-125(g) apply.

- (4) Late enrollees may be excluded from coverage for the greater of 18 months or an 18-month preexisting-condition exclusion; however, if both a period of exclusion from coverage and a preexisting-condition exclusion are applicable to a late enrollee, the combined period shall not exceed 18 months.
 - (5) A carrier may continue to enforce reasonable employer participation and contribution requirements on small employers applying for coverage; however, participation and contribution requirements may vary among small employers only by the size of the small employer group.
- (b) Premium rates for health benefit plans subject to this Act are subject to the following provisions:
- (1) The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty-five percent (25%), adjusted pro rata for any rating period of less than one year.
 - (2) For a class of business, the premium rates charged during a rating period to small employers with similar case

characteristics for the same or similar coverage, or the rates that could be charged to those employers under the rating system for that class of business shall not vary from the index rate by more than thirty-five percent (35%) of the index rate, adjusted pro rata for any rating period of less than one year.

- (3) The percentage increase in the premium rate charged to a small employer for a new rating period, adjusted pro rata for any rating period of less than one year, may not exceed the sum of the following:

 - a. The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. If a small employer carrier is not issuing any new policies, but is only renewing policies, the carrier shall use the percentage change in the base premium rate.
 - b. Any adjustment, not to exceed fifteen percent (15%) annually and adjusted pro rata for any rating period of less than one year, due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business.
 - c. Any adjustment because of a change in coverage or change in the case characteristics of the small employer as determined from the small employer carrier's rate manual for the class of business.
- (4) Any adjustment in rates charged by a small employer carrier electing to be a reinsuring carrier that is caused by reinsurance is subject to the rating limitations set forth in this section.
- (5) Premium rates for health benefit plans shall comply with the requirements of this section notwithstanding any reinsurance premiums and assessments paid or payable by small employer carriers in accordance with G.S. 58-50-150.
- (6) In any case where a small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification may not vary from the arithmetic average of the rate factors associated with all industry classifications by greater than fifteen percent (15%) of coverage.
- (7) In the case of health benefit plans issued before January 1, 1992, a premium rate for a rating period, adjusted pro rata

for any rating period of less than one year, may exceed the ranges set forth in subdivisions (b)(1) and (2) of this section for a period of three years after January 1, 1992. In that case, the percentage increase in the premium rate charged to a small employer in such a class of business for a new rating period may not exceed the sum of the following:

- a. The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. If a small employer carrier is not issuing any new policies, but is only renewing policies, the small employer carrier shall use the percentage change in the base premium rate.
- b. Any adjustment because of a change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.

- (8) Small employer carriers shall apply rating factors including case characteristics, consistently with respect to all small employers in a class of business. Adjustments in rates for claims experience, health status, and duration from issue may not be applied individually. Any such adjustment must be applied uniformly to the rate charged for all participants of the small employer.

(c) A small employer carrier shall not involuntarily transfer a small employer into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless the carrier offers to transfer all small employers in the class of business without regard to case characteristics, claims experience, health status, or duration of coverage since issue.

(d) In connection with the offering for sale of any health benefit plan to a small employer, each small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of:

- (1) The extent to which premium rates for a specified small employer are established or adjusted in part based upon the actual or expected variation in claims costs or actual or expected variation in health condition of the eligible employees and dependents of the small employer.
- (2) Provisions concerning the small employer carrier's right to change premium rates and the factors other than claims experience that affect changes in premium rates.
- (3) Provisions relating to renewability of policies and contracts.
- (4) Provisions affecting any preexisting conditions provision.

(e) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(f) Each small employer carrier shall file with the Commissioner annually on or before March 15 an actuarial certification certifying that it is in compliance with this Act and that its rating methods are actuarially sound. The small employer carrier shall retain a copy of the certification at its principal place of business.

(g) A small employer carrier shall make the information and documentation described in subsection (e) of this section available to the Commissioner upon request. Except in cases of violations of this Act, the information is proprietary and trade secret information and is not subject to disclosure by the Commissioner to persons outside of the Department except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction.

(h) The provisions of subdivisions (a)(1), (3), and (5) and subsections (b) through (g) of this section apply to health benefit plans delivered, issued for delivery, renewed, or continued in this State or covering persons residing in this State on or after January 1, 1992. The provisions of subdivisions (a)(2) and (4) of this section apply to health benefit plans delivered, issued for delivery, renewed, or continued in this State or covering persons residing in this State on or after the date the plan becomes operational, as designated by the Commissioner. For purposes of this subsection, the date a health benefit plan is continued is the anniversary date of the issuance of the health benefit plan.

" § 58-50-135. Elections by carriers.

(a) Every small employer carrier shall elect either to become a risk-assuming carrier and comply with the provisions of G.S. 58-50-140 or become a reinsuring carrier and comply with the provisions of G.S. 58-50-145. The election shall be binding for a five-year period except that the initial election shall be made within 60 days after January 1, 1992, and shall be made for two years. The Commissioner may, for good cause, permit a carrier to modify its election during the five-year period. All carriers under common ownership or control must make the same election in this State; provided, however, that the Commissioner may, for good cause, permit an affiliated carrier to make a separate election.

(b) A small employer carrier that elects to stop participating as a reinsuring carrier and to become a risk-assuming carrier shall not reinsure or continue to reinsure any small employer health benefit

plans under G.S. 58-50-145 and G.S. 58-50-150 as soon as the carrier becomes a risk-assuming carrier; however, a reinsuring carrier electing to become a risk-assuming carrier shall pay a prorated assessment based upon business issued as a reinsuring carrier for any part of the year that the business was reinsured. A small employer carrier that elects to stop participating as a risk-assuming carrier and to become a reinsuring carrier may reinsure small employer health benefit plans under the provisions of G.S. 58-50-145 and G.S. 58-50-150.

(c) Any small employer carrier that stops writing, administering, or otherwise providing health benefit plans to employers in this State shall continue to be governed by this Act with respect to business conducted under this Act that was transacted before the effective date of termination and that remains in force.

" § 58-50-140. Risk-assuming carriers.

(a) Any small employer carrier may elect to become a risk-assuming carrier upon application to and approval by the Commissioner. A small employer carrier shall not be approved as a risk-assuming carrier if the Commissioner finds that the carrier is not capable of assuming that status under the criteria set forth in subsection (b) of this section. The carrier shall provide public notice of its application to become a risk-assuming carrier. A small employer carrier's application to be a risk-assuming carrier shall be approved unless disapproved by the Commissioner within 60 days after the carrier's application. A small employer carrier that has had its application to be a risk-assuming carrier disapproved may request and shall be granted a public hearing within 60 days after the disapproval.

(b) In determining whether or not to approve an application by a small employer carrier to become a risk-assuming carrier, the Commissioner shall consider the carrier's financial condition and the financial condition of its parent or guaranteeing corporation, if any; its history of assuming and managing risk; its ability to assume and manage the risk of enrolling small employers without the protection of the reinsurance provided in G.S. 58-50-150; and its commitment to market fairly to all small employers in its service area.

" § 58-50-145. Reinsuring carriers.

(a) Any small employer carrier may elect to operate under the provisions of this section and G.S. 58-50-150 as a reinsuring carrier.

(b) Each reinsuring carrier shall conduct business with its members and subscribers, and administer claims for coverage reinsured by the Pool, in the same manner as it would administer health claims that it writes without reinsurance.

" § 58-50-150. North Carolina Small Employer Health Reinsurance Pool.

(a) There is created a nonprofit entity to be known as the North Carolina Small Employer Health Reinsurance Pool. All carriers issuing or providing health benefit plans in this State on and after January 1, 1992, except any small employer carrier electing to be a risk-assuming carrier, are members of the Pool.

(b) Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take place within 90 days after the notice from the Commissioner. The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of nine members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. Six of the members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented.

(c) If the initial Board is not elected at the organizational meeting, the Commissioner shall appoint the initial Board within 30 days of the organizational meeting.

(d) As used in this section, 'plan of operation' includes articles, bylaws, and operating rules of the Pool. Within 180 days after the appointment of the initial Board, the Board shall submit to the Commissioner a plan of operation and any amendments necessary or suitable to assume the fair, reasonable, and equitable administration of the Pool. The Commissioner shall approve the plan of operation if it assures the fair, reasonable, and equitable administration of the Pool and provides for the proportionate basis in accordance with the provisions of subsections (h) through (o) of this section. The plan of operation shall become effective upon approval in writing by the Commissioner consistent with the date on which the coverage under this section shall be made available. If the Board fails to submit a suitable plan of operation within 180 days after its appointment, or at any time thereafter fails to submit suitable amendments to the plan of operation, the Commissioner shall adopt and promulgate a plan of operation or amendment, as appropriate. The Commissioner shall amend any plan of operation he adopts, as necessary, after a plan of

operation is submitted by the Board and approved by the Commissioner.

(e) The plan of operation shall establish procedures for, among other things:

- (1) Handling and accounting of assets and moneys of the Pool, and for an annual financial reporting to the Commissioner.
- (2) Filling vacancies on the Board, subject to the Commissioner's approval.
- (3) Selecting an administering carrier and setting forth the powers and duties of the administering carrier.
- (4) Reinsuring risks in accordance with the provisions of this Act.
- (5) Collecting assessments from members subject to assessment to provide for claims reinsured by the Pool and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made.
- (6) Any additional matters in the Board's discretion.

(f) The Pool has the general powers and authority granted under the laws of this State to insurance companies licensed to transact accident and health insurance except the power to issue coverage directly to enrollees, and, in addition, the specific authority to do all of the following:

- (1) Enter into contracts that are necessary or proper to carry out the provisions and purposes of this Act, including the authority, with the Commissioner's approval, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions.
- (2) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members.
- (3) Take any legal action necessary to avoid the payment of improper, incorrect, or fraudulent claims against the Pool or the coverage reinsured by the Pool.
- (4) Issue various reinsurance policies in accordance with the requirements of this section.
- (5) Establish rules, conditions, and procedures pertaining to the reinsurance of members' risks by the Pool.
- (6) Establish appropriate rates, rate schedules, rate adjustments, rate classifications, and any other actuarial functions appropriate to the Pool's operation.

- (7) Assess members in accordance with the provisions of subsections (h) through (o) of this section; and make advance interim assessments that are reasonable and necessary for organizational and interim operating expenses. Any interim assessments shall be credited as offsets against any regular assessments due following the close of the Pool's fiscal year.
- (8) Appoint from among members appropriate legal, actuarial, and other committees that are necessary to provide technical assistance in the operation of the Pool, policy, and other contract design, and any other function within the Pool's authority.
- (9) Borrow money to effect the purposes of the Pool. Any notes or other evidence of indebtedness of the Pool not in default are legal investments for members and may be carried as admitted assets.
- (g) Any member that elects to be a reinsuring carrier may cede, and the Pool shall reinsure the reinsuring carrier, subject to all of the following:

 - (1) The Pool shall reinsure any basic and standard health care plan originally issued or delivered for original issue by a reinsuring carrier on or after January 1, 1992, under the requirements in G.S. 58-50-125(d). With respect to a basic or standard health care plan, the Pool shall reinsure the level of coverage provided and, with respect to other plans, the Pool shall reinsure the level of coverage provided in the basic or standard health care plan up to, but not exceeding, the level of coverage provided under either the basic or standard health care plans. Small group business of reinsuring carriers in force before January 1, 1992, may not be ceded to the Pool until January 1, 1995, and then only if and when the Board determines that sufficient funding sources are available.
 - (2) The Pool shall reinsure eligible employees or their dependents or entire small employer groups according to the following:

 - a. With respect to eligible employees and their dependents who either (i) are employed by a small employer as of the date such employer's coverage by the member begins and who enroll in a manner such that they are not considered to be late enrollees to the plan, or (ii) hired after the beginning of the employer's coverage by the member and who are not late enrollees to the plan: The coverage may be reinsured within 60 days after the

- beginning of the eligible employees' or dependents' coverage under the plan.
- b. With respect to eligible employees and their dependents, when the entire employer group is eligible for reinsurance: A small employer carrier may reinsure the entire employer group within 60 days after the beginning of the group's coverage under the plan.
 - c. With respect to any person reinsured, no reinsurance may be provided for a reinsured employee or dependent until five thousand dollars (\$5,000) in benefit payments have been made for services provided during a calendar year for that reinsured employee or dependent, which payments would have been reimbursed through the reinsurance in the absence of the five thousand dollar (\$5,000) deductible. The Boards shall review periodically the amount of the deductible and adjust it for inflation. In addition, the member shall retain ten percent (10%) of the next fifty thousand dollars (\$50,000) of benefit payments during a calendar year and the Pool shall reinsure the remainder; provided that the members' liability under this section shall not exceed ten thousand dollars (\$10,000) in any one calendar year with respect to any one person reinsured. The amount of the member's maximum liability shall be periodically reviewed by the Board and adjusted for inflation, as determined by the Board.
 - d. Reinsurance may be terminated for each reinsured employee or dependent on any plan anniversary.
 - e. Premium rates charged for reinsurance by the program to an HMO that is approved by the Secretary of Health and Human Services as a federally qualified health maintenance organization under 42 U.S.C. § 300 et seq., shall be reduced to reflect the restrictions and requirements of 42 U.S.C. § 300 et seq.
 - f. Every carrier subject to G.S. 58-50-130 shall apply its case management and claims handling techniques, including but not limited to utilization review, individual case management, preferred provider provisions, other managed care provisions or methods of operation, consistently with both reinsured and nonreinsured business.
 - g. Except as otherwise provided in this section, premium rates charged by the Pool for coverage reinsured by the Pool for that classification or group with similar case

characteristics and coverage shall be established as follows:

1. One and one-half times the rate established by the Pool with respect to the eligible employees and their dependents of a small employer, all of whose coverage is reinsured with the Pool and who are reinsured in accordance with this section.
2. Five times the rate established by the Pool with respect to an eligible employee or dependent who is reinsured in accordance with this section.
- (3) The Pool shall reinsure no more than the level of benefits provided in either the basic or standard health care plan established in accordance with G.S. 58-50-125.
- (4) The Pool may issue different types and levels of reinsurance coverage, including stop-loss coverage; and the reinsurance premium shall be adjusted to reflect the type and level of reinsurance coverage issued.
- (5) The reinsurance premium shall also be adjusted to reflect cost containment features of the plan of operation that have proven to be effective including, but not limited to: preferred provider provisions, utilization review of medical necessity of hospital and physician services, case management benefit alternatives, and other managed care provisions or methods of operation.

(h) Following the close of each fiscal year, the administering carrier shall determine the net premiums, the Pool expenses of administration, and the incurred losses for the year, taking into account investment income and other appropriate gains and losses. Health benefit plan premiums and benefits paid by a member that are less than an amount determined by the Board to justify the cost of collection shall not be considered for purposes of determining assessments. As used in this section, 'net premiums' means health benefit plan premiums for insured plans but does not mean premiums or revenue received by a carrier for Medicare and Medicaid contracts.

(i) Any net losses for the year shall be recouped by assessments of members as follows:

- (1) The Board shall determine an equitable assessment formula to recoup assessments of members that takes into consideration both overall market share of small employer carriers that are members of the Pool and the share of new business of the small employer carriers assumed during the preceding calendar year. For the first three years of operation of the Pool, if an assessment is based on an adjustment made, the assessment shall not be less than fifty

percent (50%) nor more than one hundred fifty percent (150%) of the amount it would have been if the assessment were based on the proportional relationship of the small employer carrier's total premiums for small employer coverage written in the year to the total premiums of small employer coverage written by all small employer carriers in this State in the year. The Board shall also determine whether the assessment base used to determine assessments shall be made on a transitional basis or shall be permanent. In no event shall assessments exceed four percent (4%) of the total health benefit plan premium earned in this State from health benefit plans covering small employers of members during the calendar year coinciding or ending during the fiscal year of the Pool. The Board may change the assessment formula, including an assessment adjustment formula, if applicable, from time to time as appropriate.

- (2) Health benefit plan premiums and benefits paid by a member that are less than an amount determined by the Board to justify the cost of collection shall not be considered for purposes of determining assessments. For the purposes of this section, health benefit plan premiums earned by MEWAs and other benefit arrangements, to the extent permitted by ERISA, shall be established by adding paid health losses and administrative expenses.

(j) If the assessment level is inadequate, the Board may adjust reinsurance thresholds, retention levels, or consider other forms of reinsurance. After the first three full years of operations the Board shall report to the Commissioner on its experience, the effect on reinsurance and small group rates of individual ceding, and recommendations on additional funding sources, if needed. If legislative or other broader funding alternatives are not found, the Board may enter into negotiations with representatives of health care providers to resolve any deficit through reductions in future years' payment levels for reinsured plans. Any such recommendations shall take into account the findings of the actuarial study provided for in this subsection. An actuarial study shall be undertaken within the first three years of the Pool's operation to evaluate and measure the relative risks being assumed by differing types of small employer carriers as a result of this Act. The study shall be developed by three actuaries appointed by the Commissioner, with one representing risk assuming carriers, one representing reinsuring carriers, and one from within the Department.

(k) Subject to the approval of the Commissioner, the Board may make an adjustment to the assessment formula for any reinsuring carrier that is an HMO approved as a federally qualified HMO by the Secretary of Health and Human Services under 42 U.S.C. § 300 for restrictions placed on them other than those for which an adjustment has already been made in subsection (b)(2) or (b)(5) of this section that are not imposed on other small group carriers.

(l) If assessments exceed actual losses and administrative expenses of the Pool, the excess shall be held at interest and used by the Board to offset future losses or to reduce Pool premiums. As used in this subsection, 'future losses' includes reserves for incurred but not reported claims.

(m) The Board shall determine annually each member's proportion of participation in the Pool based on financial statements and other reports that the Board considers to be necessary and requires that the member files with the Board. All carriers shall report, to the Board, claims payments made and administrative expenses incurred in this State on an annual basis and on a form prescribed by the Commissioner.

(n) The plan of operation shall provide for the imposition of an interest penalty for late payment of assessments.

(o) The Board may abate or defer, in whole or in part, the assessment of a member if, in the Board's opinion, payment of the assessment would endanger the member's ability to fulfill its contractual obligations. In the event an assessment against a member is abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in this section. The member receiving the abatement or deferment shall remain liable to the Pool for the deficiency.

(p) Neither the participation in the Pool as members, the establishment of rates, forms, or procedures, nor any other joint or collective action required by this Act shall be the basis of any legal action, criminal or civil liability, or penalty against the Pool or any of its members.

(q) Any person or member made a party to any action, suit, or proceeding because the person or member serves or served on the Board or on a committee or is or was an officer or employee of the Pool shall be held harmless and be indemnified by the Pool against all liability and costs, including the amounts of judgments, settlements, fines, or penalties, and expenses and reasonable attorneys' fees incurred in connection with the action, suit, or proceeding. However, the indemnification shall not be provided on any matter in which the person or member is finally adjudged in the action, suit, or

proceeding to have committed a breach of duty involving gross negligence, dishonesty, willful misfeasance, or reckless disregard of the responsibilities of service or office. Costs and expenses of the indemnification shall be prorated among and paid for by all members.

(r) The Pool is exempt from the taxes imposed by Article 8B of Chapter 105 of the General Statutes."

Sec. 2. If any provision of this act is held to be invalid by any court of competent jurisdiction, the court's holding as to that provision shall not affect the validity or operation of other provisions of this act; and to that end the provisions of this act are severable.

Sec. 3. G.S. 58-50-120 and G.S. 58-50-125, contained in Section 1 of this act, become effective September 1, 1991. The remainder of this act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 10th day of July, 1991.

S.B. 360

CHAPTER 631**AN ACT TO CHANGE THE DEFINITION OF "IMMINENT HAZARD" AS IT APPLIES TO CHAPTER 130A OF THE GENERAL STATUTES.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-2 reads as rewritten:

" § 130A-2. *Definitions.*

The following definitions shall apply throughout this Chapter unless otherwise specified:

- (1) 'Commission' means the Commission for Health Services.
- (2) 'Department' means the Department of Environment, Health, and Natural Resources.
- (3) 'Imminent hazard' means a situation which is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.
- (4) 'Local board of health' means a district board of health or a county board of health.
- (5) 'Local health department' means a district health department or a county health department.
- (6) 'Local health director' means the administrative head of a local health department appointed pursuant to this Chapter.

- (7) 'Person' means an individual, corporation, company, association, partnership, unit of local government or other legal entity.
- (8) 'Secretary' means the Secretary of the Department of Environment, Health, and Natural Resources.
- (9) 'Unit of local government' means a county, city, consolidated city-county, sanitary district or other local political subdivision, authority or agency of local government.
- (10) 'Vital records' means birth, death, fetal death, marriage, annulment and divorce records registered under the provisions of Article 4 of this Chapter."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1991.

S.B. 534

CHAPTER 632

AN ACT TO AUTHORIZE THE TOWN OF COLUMBUS TO LEVY A ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Columbus Town Council may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms

for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the town finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The Town Council may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

(e) Disposition of tax proceeds. The Town Council of Columbus shall use fifty percent (50%) of the proceeds of the occupancy tax to promote travel and tourism. The remaining proceeds may be used for any public purpose.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Columbus Town Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in

which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1991.

S.B. 684

CHAPTER 633

AN ACT TO ENABLE THE BOARD OF CHIROPRACTIC EXAMINERS TO CERTIFY DIAGNOSTIC IMAGING TECHNICIANS EMPLOYED BY CHIROPRACTORS.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-143.2. Certification of diagnostic imaging technicians.

The State Board of Chiropractic Examiners shall certify the competence of any person employed by a licensed chiropractor practicing in the State if the employee's duties include the production of diagnostic images, whether by X ray or other imaging technology. Applicants for certification must demonstrate proficiency in the following subjects:

- (1) Physics and equipment of radiographic imaging;
- (2) Principles of radiographic exposure;
- (3) Radiographic protection;
- (4) Anatomy and physiology;
- (5) Radiographic positioning and procedure.

The State Board of Chiropractic Examiners may adopt rules pertaining to initial educational requirements, examination of applicants, and continuing education requirements as are reasonably required to enforce this provision."

Sec. 2. This act becomes effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1991.

H.B. 132

CHAPTER 634

AN ACT TO REQUIRE NOTICE BY CERTIFIED LETTER OF MEETING AT WHICH DRAINAGE ASSESSMENTS ARE DETERMINED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 156-93.1(a) reads as rewritten:

"(a) The board of drainage commissioners may annually levy maintenance assessments in the same ratio as the existing classification of the lands within the district. The amount of these assessments shall be determined by the board of drainage commissioners of the district. The proceeds of these assessments shall be used for the purpose of maintaining canals of the drainage district in an efficient operating condition and for the necessary operating expenses of the district. Notice of the meeting at which the board of drainage commissioners determines the amount of the annual levy shall be mailed to the owners, as shown on the county tax records, of all property subject to assessment, or shall be published once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be sent or published not more than 30 days nor less than 10 days prior to the meeting, and shall state the time, place, and purposes of the meeting. Any interested person has the right to be heard at the meeting prior to the drainage commissioners taking any action on the proposed assessment. In the event that any interested and aggrieved party disagrees with the said assessment, he may, within 20 days of the mailing of the notice of the assessment, file with the clerk for the county wherein the proceeding is pending, a notice specifically setting forth his objection. The Secretary of the District shall file in the records of the proceeding a certification setting forth the date of the mailing of the notice of the annual maintenance assessments. The clerk shall thereupon notify the senior resident superior court judge of such district who shall set the objection down for hearing at the earliest possible time. The court shall hear the matter upon the objections duly set forth in the notice of objection. ~~Notice of the meeting at which the board of drainage commissioners determines the amount of the annual levy shall be published in a newspaper of general circulation in the area for four successive days, not more than 30 or less than 10 days prior to the meeting. The notice shall be not less than one-fourth page in size and shall state the time, place, and purpose of the meeting. At such meeting any interested person shall have the right to be heard prior to action on the proposed assessment.~~

The board of drainage commissioners shall have the authority to employ engineering assistance, construction equipment, superintendents and operators for the equipment necessary for the efficient maintenance of the canals, or the maintenance may be done by private contract made after due advertisement as required for the original construction work."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 11th day of July, 1991.

H.B. 398

CHAPTER 635

AN ACT TO AUTHORIZE JUDGES TO MAKE INTERIM ALLOCATIONS OF ASSETS PENDING A FINAL EQUITABLE DISTRIBUTION JUDGMENT AND TO ESTABLISH A REBUTTABLE PRESUMPTION THAT PROPERTY ACQUIRED DURING MARRIAGE IS MARITAL PROPERTY EXCEPT UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-20 is amended by adding the following new subsection to read:

"(1) After an action for equitable distribution has been filed the Court may, for just cause, order the spouse in control of marital assets to transfer the use and possession of some or all of those assets to the other spouse provided that any and all assets so transferred shall be subject to a full accounting when the property is ultimately allocated in an equitable distribution judgment. Any property transfer made pursuant to this subsection shall be made without prejudice to the rights of either spouse to claim a contrary classification, value, or distribution in the final equitable distribution trial."

Sec. 1.1. G.S. 50-20(b)(1) reads as rewritten:

"(1) 'Marital property' means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property in accordance with subdivision (2) of this ~~section~~ subsection. Marital property includes all vested pension, retirement, and other deferred compensation rights, including military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence."

Sec. 2. This act becomes effective October 1, 1991, and applies to actions for equitable distribution pending or filed on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 1991.

H.B. 420

CHAPTER 636

AN ACT TO MAKE VARIOUS TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND TO MAKE TECHNICAL AMENDMENTS TO THE LAWS REGULATING ABSENTEE BALLOTS.

The General Assembly of North Carolina enacts:

Section 1. The first sentence of subsection (e) of Section 33 of Chapter 1066 of the 1989 Session Laws (1990 Regular Session) reads as rewritten:

"This ~~act~~ section shall become effective July 15, 1990."

Sec. 2. Chapter 823 of the 1989 Session Laws (1990 Regular Session) is amended:

- (1) In the introductory language of subdivision (4) by deleting "G.S. 122C-163(d)" and substituting in lieu thereof "G.S. 122C-263(d)";
- (2) In the introductory language of subdivision (5) by deleting "G.S. 122C-165(e)" and substituting in lieu thereof "G.S. 122C-265(e)".

Sec. 3. Consistent with G.S. 97-1.1, the Revisor of Statutes is authorized to change the terms "Workmen's Compensation Act", "Workmen's Compensation", and "workmen's compensation" to "Workers' Compensation Act", "Workers' Compensation", and "workers' compensation", respectively, wherever these terms are used in the General Statutes.

Sec. 4. (a) G.S. 25-8-313(1)(j) reads as rewritten:

"(j) With respect to the transfer of a security interest where the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under paragraphs (a), (b), (c), (d), or (g), at the time the ~~transfer~~ transferor has signed a security agreement containing a description of the security and value is given by the secured party."

(b) G.S. 25-8-313(2) is amended by deleting the words "paragraphs (c), (d), (i), and (g)" and inserting in lieu thereof "paragraphs (c), (d)(i), and (g)".

(c) G.S. 25-8-317(4) reads as rewritten:

"(4) The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in

the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on whose books the ~~interests~~ interest of the debtor appears."

Sec. 5. G.S. 88-23.1(b)(2) is amended by deleting the period appearing in the phrase "ten thousand dollars (\$10.000)" and inserting a comma in lieu thereof.

Sec. 6. G.S. 90-202.8(a) is amended in the introductory language by deleting "General Assembly" and substituting in lieu thereof "General Statutes".

Sec. 7. G.S. 106-65.31(a) and (b) are amended by deleting "G.S. 106-65.27(e)(3)" wherever this reference appears and substituting in lieu thereof "G.S. 106-65.27(d)(3)".

Sec. 8. The catch line of G.S. 113-292 is amended by deleting the word "rule" in the phrase "in rule of inland fishing" and substituting in lieu thereof the word "regulation".

Sec. 9. G.S. 115C-81(f)(1) is amended by deleting "G.S. 115C-81(f) and 115C-82" and substituting in lieu thereof the words "this subsection".

Sec. 10. G.S. 115C-238.6(a) is amended by deleting "G.S. 115C-238.3(e)" and substituting in lieu thereof "G.S. 115C-238.3(d)".

Sec. 11. G.S. 115D-90(d) reads as rewritten:

"(d) Any license shall be restricted to the programs of instruction or courses or subjects specifically indicated in the application for a license. The holder of a license shall present a supplementary application as may be directed by the ~~State Superintendent~~ President of the Community College System for approval of additional programs of instruction, courses, or subjects, in which it is desired to offer instruction during the effective period of the license."

Sec. 12. The first paragraph of G.S. 119-18 reads as rewritten:

"For the purpose of defraying the expenses of enforcing the provisions of this Article there shall be paid to the Secretary of Revenue a charge of one fourth of one cent ($\frac{1}{4}$ of 1¢) per gallon upon all kerosene and motor fuel. The inspection tax shall be due and payable at the same time that the per gallon excise tax is due and payable under the provisions of G.S. 105-434 to 105-436, and payment shall be made concurrently with payment of said per gallon excise tax, unless the Secretary of Revenue shall by rule and regulation prescribe other methods for the collection of such tax. There shall, from time to time, be allotted by the ~~Budget Bureau,~~ Office of State Budget and Management, from the inspection fees collected under authority of the inspection laws of this State, such sums as may be necessary to administer and effectively enforce the provisions of the inspection laws."

Sec. 13. The first sentence of G.S. 120-4.29 reads as rewritten:

"Except for the applications of the provisions of G. S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, annuity, or retirement allowance, to the return of contributions, or to the receipt of the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as this Article specifically provides."

Sec. 14. G.S. 125-11.9(1) is amended by deleting the words "this act" and substituting in lieu thereof the words "this Article".

Sec. 15. G.S. 135-39.5B is amended by deleting the fifth sentence thereof as it appears in the November 1990 Replacement Pamphlet in the General Statutes.

Sec. 16. G.S. 143-204.8(b) reads as rewritten:

"(b) An allotment shall only be made under this section upon evidence submitted to the Governor and Council of State by the Secretary of Cultural Resources that during the immediately preceding season of production, the drama was operated at a deficit because of inclement weather or other circumstances beyond the control of the corporation or trust and that contributions or gifts made to the corporation or trust are deductible ~~from net income for income tax purposes under G.S. 105-147(15)~~ for income tax purposes under the Internal Revenue Code."

Sec. 17. G.S. 143-299.3(b) is amended by deleting the words "this act" and substituting in lieu thereof the words "this section".

Sec. 18. G.S. 161-10 is amended by deleting the words "G.S. 130-40 or".

Sec. 19. (a) The term "area mental health, mental retardation, and substance abuse director" is deleted wherever it appears in G.S. 7A-647(3), and the term "area mental health, developmental disabilities, and substance abuse director" is substituted in lieu thereof.

(b) The term "Commission for Mental Health, Mental Retardation, and Substance Abuse Services" is deleted wherever it appears in G.S. 15A-1002, 20-179(m) and (t), 90-96.01(a), 131D-10.4, and 131D-32(g) and the term "Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services" is substituted in lieu thereof.

(c) The terms "Area Mental Health, Mental Retardation, and Substance Abuse Authority", "Area Mental Health, Mental

Retardation, and Substance Abuse Authorities", "area mental health, mental retardation, and substance abuse authority", and "area mental health, mental retardation, and substance abuse authorities" are deleted wherever they appear in G.S. 20-179(m), 90-96.01(a), 108A-103(b), 131D-3, and 131D-4, and the terms "Area Mental Health, Developmental Disabilities, and Substance Abuse Authority", "Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities", "area mental health, developmental disabilities, and substance abuse authority", and "area mental health, developmental disabilities, and substance abuse authorities", respectively, are substituted in lieu thereof.

(d) The term "Division of Mental Health, Mental Retardation and Substance Abuse Services" is deleted in G.S. 143B-153(8) and the term "Division of Mental Health, Developmental Disabilities, and Substance Abuse Services" is substituted in lieu thereof.

Sec. 20. (a) G.S. 128-27(e)(5) is amended by deleting the words "of this section" in the phrase "subdivision (3a) of this section" and substituting in lieu thereof the words "of this subsection".

(b) G.S. 163-278.42(d) is amended by deleting the words "section (e)" in the phrase "section (e) of this section" and substituting "subsection (e)" in lieu thereof.

Sec. 21. Chapter 991 of the 1989 Session Laws is amended by deleting "60 days" wherever it appears and substituting "50 days". Article 20 of Chapter 163 of the General Statutes is amended by deleting "60 days" wherever it appears and substituting "50 days".

Sec. 22. G.S. 81A-8 reads as rewritten:

" § 81A-8. *Standards of weights and measures.*

Weights and measures that are traceable to the U.S. Prototype Standards supplied by the United States, or approved as being satisfactory by the ~~National Bureau of Standards~~ National Institute of Standards and Technology, shall be the State primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the ~~National Bureau of Standards~~ National Institute of Standards and Technology. All secondary standards may be prescribed by the Commissioner and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the Commissioner or his authorized agent. Complete record of the standards belonging to the State shall be maintained by the Commissioner."

Sec. 23. G.S. 81A-9 reads as rewritten:

" § 81A-9. *Definitions.*

The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) Adjustment. -- 'Adjustment' is an act involving the tightening or loosening, or lengthening or shortening, or movement, of any part of a ~~scale or weighing or measuring~~ device, or the coordination of mechanical action of parts or electronic components with or upon each other, so as to make the ~~scale or weighing or measuring~~ device give correct indications of applied weight or measure values within legal tolerance, and the correctness of indications shall be determined by test provided for under definition of the term 'service' as defined in this Chapter.
- (2) Authorized Agent. -- An 'authorized agent' is any employee of the North Carolina Department of Agriculture designated by the Commissioner to enforce any provisions of this Chapter and who is designated by an official identification card issued by the Commissioner.
- (3) Barrel. -- The term 'barrel,' when used in connection with beer, ale, porter, and other similar fermented liquor is a unit of 31 liquid gallons; fractional parts of a barrel shall be understood to mean like fractional parts of 31 gallons.
- (4) Bulk Sale.-- The term 'bulk sale' is the sale of commodities when the quantity is determined at the time of sale.
- (5) Bushel. -- The term 'bushel' when used in connection with dry measure and standard containers is a unit of 2150.42 cubic inches, of which the dry quart and dry pint, respectively, are the one-thirty-second and one-sixty-fourth parts.
- (6) Commissioner of Agriculture. -- 'Commissioner' is the Commissioner of Agriculture of the State of North Carolina.
- (7) Condemned Equipment. -- 'Condemned equipment' is equipment that is permanently out of service.
- (8) Cord. -- 'Cord' when used in connection with purchases of wood is a quantity of wood consisting of any number of sticks, bolts or pieces laid parallel and together so as to form a rick or stack occupying a space four feet wide, four feet high and eight feet long, or such other dimensions that will when multiplied together equal 128 cubic feet by volume, construed as being seventy percent (70%) solid and thirty percent (30%) air space or 90 solid cubic feet.
- (9) Correct. -- 'Correct' is conformance to all applicable requirements of this Chapter.
- (10) Flour. -- 'Flour' is any finely ground product of wheat, or other grain, corn, peas, beans, seed or other substance,

- with or without added ingredients, intended for use as food for man.
- (11) Gallon. -- 'Gallon' when used in connection with liquid measure is a unit of 231 cubic inches, of which the liquid quart, liquid pint and gill are, respectively, the quarter, the one-eighth and the one-thirty-second parts.
- (12) Installation. -- 'Installation' is an act involving the erection, or building, or assembling of parts, or the placing or setting up of a ~~scale or~~ weighing or measuring device so as to give correct indications of applied weight or measure values within legal tolerance when used for the purpose intended, and the correctness of indications shall be determined by test provided for under definition of the term 'service' as defined in this Chapter.
- (13) Maintenance. -- 'Maintenance' is an act pursuant to the retention of a ~~scale or~~ weighing or measuring device in such working condition as to give correct applied weight or measure value indications within legal tolerance when used as intended, which may involve either or both adjustment or repair before or after inaccuracy develops in fact, and the correctness of indications shall be determined by test provided for under the term 'service' as defined in this Chapter.
- (14) Meal. -- 'Meal' is any product of grain, corn, peas, beans, seed or other substance coarsely ground, with or without added ingredients, either bolted, or unbolted, including grits and hominy, intended for use as food for man.
- (15) Package. -- 'Package' is any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale.
- (16) Person. -- 'Person' is both plural and singular, as the case demands, and includes individuals, partnerships, corporations, companies, firms, societies, and associations.
- (17) Pound. -- 'Pound,' used in connection with weight is the avoirdupois pound as declared by act of the United States Congress, except in those cases where it is common practice to use the 'troy' pound or 'apothecaries' pound, and the 'ounce' is one-sixteenth part of an avoirdupois pound.
- (18) Primary Standards. -- 'Primary standards' are the physical standards of the State which serve as the legal reference from which all other standards, weights and measures are derived.

- (19) Rejected Equipment. -- 'Rejected equipment' is equipment that is incorrect, which is considered susceptible of proper repair.
- (20) Repair. -- 'Repair' is an act involving the replacement or mending of a broken or nonadjustable part or parts and the restoration of a ~~scale or weighing or measuring~~ device to such working condition as to give correct indications of applied weight or measure values within legal tolerance when used for the purpose intended, and the correctness of indications shall be determined by test provided for under the term 'service' as defined in this Chapter.
- (21) Sale or Sell. -- 'Sale' or 'sell' is the ordinary meaning of said words and includes barter and exchange.
- (22) Scale Technician. -- A 'scale technician' is any person who, for hire or award, renders service involving adjustment, installation, repair, or maintenance of a scale or weighing device, either used or intended to be used in determining weight value, or values, by either physical act, instruction, or supervision.
- (23) Secondary Standards. -- 'Secondary standards' are the physical standards which are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.
- (24) Service. -- 'Service' is activity involving adjustment, installation, repair, or maintenance or a combination of two or more of these activities with respect to a ~~scale or weighing or measuring device, and, in addition thereto, a test for determination of the accuracy of weight value indication in the following manner: Applying a series of loads of standard weight on a platter or platform up to capacity on a scale of 30 pounds capacity, and on all other scales except vehicle scales, standard weight loads equal to the first dial and/or unit weight on dial scales, and on beam scales and digital instruments a standard weight load equal to three-fourths scale capacity shall be applied. On vehicle scales up to and including 10 tons a minimum of 5,000 pounds of standard weight load and 5,000 pounds of build-up load equally distributed. On vehicle scales with a rated capacity in excess of 10 tons a standard weight load (build-up load if standard weights are not available) of not less than 20,000 pounds. If scale is so equipped all tare mechanisms shall be included in test.~~

- (25) Ton. -- 'Ton' is a unit of 2.000 pounds, avoirdupois weight.
- (26) Weight. -- 'Weight' when used in connection with any commodity is net weight; provided, however, where the label declares that the product is sold by drained weight, weight means net drained weight.
- (27) Weight(s) and (or) Measure(s). -- 'Weight(s) and (or) measure(s)' are all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices."

Sec. 24. G.S. 81A-15(8) reads as rewritten:

- "(8) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this Chapter or regulations promulgated pursuant thereto. In carrying out the provisions of this section, recognized sampling procedures, ~~such as are designated in National Bureau of Standards Handbook 67, "Checking Prepackaged Commodities,"~~ shall be used."

Sec. 25. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1991.

H.B. 487

CHAPTER 637

AN ACT TO AMEND THE LAW ALLOWING TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.010(6) is repealed.

Sec. 2. G.S. 105-163.011 reads as rewritten:

"§ 105-163.011. *Tax credits allowed.*

(a) Corporations. -- Subject to the limitations contained in G.S. 105-163.012, a corporation that invests in the equity securities of a ~~North Carolina Capital Resource Corporation, a North Carolina Enterprise Corporation, Corporation~~ or a qualified investment organization is allowed as a credit against the income tax imposed by Division I of this Article, the franchise tax imposed by G.S. 105-116.105-120.2, and 105-122, or the gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8 for the taxable year an amount equal to twenty-five percent (25%) of the amount invested or seven hundred

fifty thousand dollars (\$750,000), whichever is less. The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the investment was made.

(b) Individuals. -- Subject to the limitations contained in G.S. 105-163.012, an individual who invests in the equity securities or subordinated debt of (i) ~~a North Carolina Capital Resource Corporation,~~ (ii) a qualified investment organization, ~~(iii)~~ (ii) a qualified business venture, ~~(iv)~~ (iii) a qualified grantee business, or ~~(iv)~~ (iv) a North Carolina Enterprise Corporation is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested or one hundred thousand dollars (\$100,000), whichever is less. The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the investment was made.

(c) Application. -- To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 of the year following the calendar year in which the investment was made. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require.

(d) Penalties. -- The penalties provided in G.S. 105-236 apply in this Division."

Sec. 3. G.S. 105-163.012(b) reads as rewritten:

"(b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for investments made in a calendar year may not exceed twelve million dollars (\$12,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to G.S. 105-163.011(c). If the total amount of tax credits claimed for investments made in a calendar year exceeds twelve million dollars (\$12,000,000), the Secretary shall allow a portion of the credits claimed on the following basis:

- (1) A total of six million dollars (\$6,000,000) in tax credits for investments in North Carolina Enterprise Corporations ~~or North Carolina Capital Resource Corporations~~ shall be allocated among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer.
- (2) A total of six million dollars (\$6,000,000) in tax credits for investments in qualified investment organizations, qualified business ventures, and qualified grantee businesses shall be allocated among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer.

- (3) If the total amount of the credits claimed by taxpayers for the investments described in either subdivision (1) or (2) is less than six million dollars (\$6,000,000), the Secretary shall allow additional credits for the investments described in the other subdivision until the total amount of all tax credits allowed equals twelve million dollars (\$12,000,000)."

Sec. 4. G.S. 105-163.013 reads as rewritten:

" § 105-163.013. *Registration.*

(a) **Qualified Investment Organizations.** -- In order to qualify as a qualified investment organization under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application in which the business certifies the following facts:

- (1) It intends to invest at least seventy percent (70%) of its capital in equity securities or subordinated debt of qualified business ventures or qualified grantee businesses;
- (2) It has an initial capitalization of at least five million dollars (\$5,000,000), of which no more than two million dollars (\$2,000,000) is to be contributed pursuant to binding commitments;
- (3) It does not own the securities of any business for the purpose of operating the business or for any purpose other than as an investment for future sale;
- (4) It is controlled by a financial institution or is not controlled by another business; and
- (5) It was not organized to invest in only one business or one group of businesses that conduct the same or a similar type of business activity.

To remain qualified as a qualified investment organization under this Division, the business must renew its registration annually as prescribed by rule by filing an application for renewal in which the business certifies the facts required in the original application and describes its investments in qualified business ventures and qualified grantee businesses. Upon termination of the qualified investment organization, it shall file a final report describing its investments in qualified business ventures and qualified grantee businesses and certifying that it invested at least seventy percent (70%) of its capital in equity securities or subordinated debt of such businesses.

If a qualified business venture in which the qualified investment organization has invested fails to file an application for renewal of registration under subsection (b) of this section or if the registration of the qualified business venture is revoked by the Secretary of State, any investment by the qualified investment organization in the business

venture within five years after the qualified investment organization's initial investment in the business venture is, for the purpose of this Division, an investment in a qualified business venture.

(b) **Qualified Business Ventures.** -- In order to qualify as a qualified business venture under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State a financial statement certified by an independent certified public accountant for its most recent fiscal year showing revenues, as determined in accordance with generally accepted accounting procedures, of five million dollars (\$5,000,000) or less on a consolidated basis and an application in which it certifies the following facts:

- (1) Its headquarters and principal business operations are in North Carolina or it has, as a condition of an investment eligible for a credit under this Division, agreed to establish its headquarters and principal business operations in North Carolina within three months after the investment is made;
- (2) It has, as a condition of an investment eligible for a credit under this Division, agreed to retain its headquarters and principal business operations in North Carolina for at least three years after the investment is made;
- (3) It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry; and
- (4) It does not engage as a substantial part of its business in construction, contracting, selling goods at retail, or the purchase, sale, development, or holding for investment of commercial paper, financial instruments, securities, or real property, or otherwise make investments.

To remain qualified as a qualified business venture, the business must renew its registration annually as prescribed by rule by filing a financial statement for the most recent fiscal year showing revenues, as determined in accordance with generally accepted accounting procedures, of five million dollars (\$5,000,000) or less on a consolidated basis and an application for renewal in which the business certifies the facts required in the original application and that it has not moved its headquarters or principal business operations out of North Carolina.

If the revenues of a qualified business venture exceed five million dollars (\$5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this fact by filing a financial statement showing the revenues of the business for that year.

(c) **Qualified Grantee Businesses.** -- In order to qualify as a qualified grantee business under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application in which the business certifies the following facts:

- (1) Its headquarters and principal business operations are in North Carolina or it has, as a condition of an investment eligible for a credit under this Division, agreed to establish its headquarters and principal business operations in North Carolina within three months after the investment is made;
- (2) It has, as a condition of an investment eligible for a credit under this Division, agreed to retain its headquarters and principal business operations in North Carolina for at least three years after the investment is made; and
- (3) It has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, or the Federal Small Business Innovation Research Program.

To remain qualified as a qualified grantee business, the business must renew its registration annually as prescribed by rule by filing an application for renewal in which the business certifies the facts required in the original application and that it has not moved its headquarters or principal business operations out of North Carolina, listed in this subsection.

(d) **Application Forms; Rules; Fees.** -- Applications for registration and for renewal of registration under this section shall be in such form as the Secretary of State may prescribe. The Secretary may, by rule, require applicants to furnish supporting information in addition to the information required by subsections (a), (b), and (c) of this section. The Secretary may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary's responsibilities under this Division. The Secretary shall prepare blank forms for the applications and shall distribute them throughout the State and furnish them on request. Each application shall be signed by the owners of the business or, in the case of a corporation, by its president, vice-president, treasurer, or secretary. There shall be annexed to the application the affirmation of the person making the application in the following form: 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete.'

The fee for filing an application for registration under this section shall be one hundred dollars (\$100.00). The fee for filing an

application for renewal of registration under this section shall be fifty dollars (\$50.00).

(e) Revocation of Registration. -- If the Securities Division of the Department of the Secretary of State finds that any of the information contained in an application of a business registered under this section is false, it shall revoke the registration of the business."

Sec. 5. G.S. 105-163.014 reads as rewritten:

" § 105-163.014. *Forfeiture of credit.*

~~If the Commissioner of Banks certifies that a North Carolina Capital Resource Corporation has failed to comply with the requirements of Article 2 of Chapter 53A of the General Statutes, every taxpayer who has received a tax credit under this Division for an investment in the corporation made during the preceding five years forfeits the credit.~~ If a qualified investment organization fails to file an application for renewal of registration under G.S. 105-163.013 or if its registration is revoked by the Secretary of State, every taxpayer who has received a tax credit under this Division for an investment in the organization made during the preceding five years forfeits the credit.

A taxpayer who has received a tax credit under this Division for an investment in a qualified business venture or qualified grantee business forfeits the credit if, within three years after the investment was made, (i) he participates in the operation of the qualified business venture or qualified grantee business, (ii) except as provided in the following paragraph, the qualified business venture or qualified grantee business fails to file an application for renewal of registration under G.S. 105-163.013, or (iii) the registration of the qualified business venture or qualified grantee business is revoked by the Secretary of State. For the purpose of this section, a taxpayer participates in the operation of a qualified business if the taxpayer, his spouse, parent, or child, or an employee of any of these individuals or of a business controlled by any of these individuals, provides services of any nature to the qualified business for compensation, whether as an employee, a contractor, or otherwise. However, a person who serves as a member of the board of directors of a business does not participate in its operation if he performs only the functions ordinarily performed by directors and receives as compensation only reasonable reimbursement of expenses incurred in serving as a director. A person who owns stock in a business does not participate in its operation if he performs only the functions ordinarily performed by shareholders.

A taxpayer who has received a credit under this Division for an investment in a qualified business venture does not forfeit the credit if the business is unable to renew its registration solely for the reason that in its most recent fiscal year, its revenues exceeded five million

dollars (\$5,000,000). A taxpayer who has received a credit under this Division for an investment in a qualified grantee business does not forfeit the credit if the business is unable to renew its registration solely for the reason that its receipt of the grant or funding referred to in G.S. 105-163.013(c)(3) occurred more than three years prior to the date on which the business would have been required to renew its registration.

A taxpayer who forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer who fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1991.

H.B. 739

CHAPTER 638

AN ACT TO REQUIRE THAT ANY EXTENSION OF THE CORPORATE LIMITS OF THE TOWN OF HOLDEN BEACH BE SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. In addition to the requirements of Article 4A of Chapter 160A of the General Statutes, any extension of the corporate limits of the Town of Holden Beach shall be subject to approval by the qualified voters of the Town as set forth in this act.

Sec. 2. Any annexation by the Town of Holden Beach shall, in addition to the requirements of Article 4A of Chapter 160A of the General Statutes, be effective only if approved by the qualified voters of the Town in a referendum if:

- (1) A referendum on the proposed annexation is called by the Board of Commissioners of the Town in the annexation ordinance; or
- (2) A petition calling for a referendum and containing the signatures of not less than forty percent (40%) of the registered voters of the Town is filed with the Board of Commissioners of the Town no later than 20 days after adoption of the annexation ordinance.

Sec. 3. The Holden Beach Board of Commissioners shall establish procedures to implement this act governing verification of

petitions and signatures, timing of elections, and effective dates of annexation ordinances in the event of an election.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1991.

H.B. 821

CHAPTER 639

AN ACT TO ESTABLISH AN ADDITIONAL METHOD FOR AN
INDIVIDUAL TO DESIGNATE AN ATTORNEY-IN-FACT TO
MAKE HEALTH CARE DECISIONS AND TO AMEND THE
NATURAL DEATH ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 32A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3.

"Health Care Powers of Attorney.

" § 32A-15. General purpose of this Article.

(a) The General Assembly recognizes as a matter of public policy the fundamental right of an individual to control the decisions relating to his or her medical care, and that this right may be exercised on behalf of the individual by an agent chosen by the individual.

(b) The purpose of this Article is to establish an additional, nonexclusive method for an individual to exercise his or her right to give, withhold, or withdraw consent to medical treatment when the individual lacks sufficient understanding or capacity to make or communicate health care decisions.

(c) This Article is intended and shall be construed to be consistent with the provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event of a conflict between the provisions of this Article and Article 23 of Chapter 90, the provisions of Article 23 of Chapter 90 shall control.

" § 32A-16. Definitions.

As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (1) 'Health care' means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or mental health or personal care and comfort including, life-sustaining procedures.
- (2) 'Health care agent' means the person appointed as a health care attorney-in-fact.
- (3) 'Health care power of attorney' means a written instrument, signed in the presence of two qualified witnesses, and

acknowledged before a notary public, pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the principal, and which substantially meets the requirements of this Article.

- (4) 'Life-sustaining procedures' are those forms of care or treatment which only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of treatment which sustain, restore or supplant vital bodily functions, but do not include care necessary to provide comfort or to alleviate pain.
- (5) 'Principal' means the person making the health care power of attorney.
- (6) 'Qualified witness' means a witness in whose presence the principal has executed the health care power of attorney, who believes the principal to be of sound mind, and who states that he (i) is not related within the third degree to the principal nor to the principal's spouse, (ii) does not know nor have a reasonable expectation that he would be entitled to any portion of the estate of the principal upon the principal's death under any existing will or codicil of the principal or under the Intestate Succession Act as it then provides, (iii) is not the attending physician of the principal, nor an employee of the attending physician, nor an employee of a health facility in which the principal is a patient, nor an employee of a nursing home or any group-care home in which the principal resides, and (iv) does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney.

" § 32A-17. Who may make a health care power of attorney.

Any person having understanding and capacity to make and communicate health care decisions, who is 18 years of age or older, may make a health care power of attorney.

" § 32A-18. Who may act as a health care attorney-in-fact.

Any competent person who is not engaged in providing health care to the principal for remuneration, and who is 18 years of age or older, may act as a health care agent.

" § 32A-19. Extent of authority; limitations of authority.

(a) A principal, pursuant to a health care power of attorney, may grant to the health care agent full power and authority to make health care decisions to the same extent that the principal could make those decisions for himself or herself if he or she had understanding and capacity to make and communicate health care decisions, including

without limitation, the power to authorize withholding or discontinuing life-sustaining procedures. A health care power of attorney may also contain or incorporate by reference any lawful guidelines or directions relating to the health care of the principal as the principal deems appropriate.

(b) A health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of remains.

(c) A health care power of attorney may contain, and the authority of the health care agent shall be subject to, the specific limitations or restrictions as the principal deems appropriate.

(d) The powers and authority granted to the health care agent pursuant to a health care power of attorney shall be limited to the matters addressed in it, and, except as necessary to exercise such powers and authority relating to health care, shall not confer any power or authority with respect to the property or financial affairs of the principal.

(e) This act shall not be construed to invalidate a power of attorney that authorizes an agent to make health care decisions for the principal, which was executed prior to the effective date of this act.

" § 32A-20. Effectiveness and duration; revocation.

(a) A health care power of attorney shall become effective when and if the physician or physicians designated by the principal determine in writing that the principal lacks sufficient understanding or capacity to make or communicate decisions relating to the health care of the principal, and shall continue in effect during the incapacity of the principal. The determination shall be made by the principal's attending physician if the physician or physicians designated by the principal is unavailable or is otherwise unable or unwilling to make such determination. A health care power of attorney may include a provision that, if the principal does not designate a physician for reasons based on his religious or moral beliefs as specified in the health care power of attorney, a person designated by the principal in the health care power of attorney may certify in writing, acknowledged before a notary public, that the principal lacks sufficient understanding or capacity to make or communicate decisions relating to his health care. The person so designated must be a competent person 18 years of age or older, not engaged in providing health care to the principal for remuneration, and must be a person other than the health care agent.

(b) A health care power of attorney shall be revoked by the death of the principal and may be revoked by the principal at any time, so long as the principal is capable of making and communicating health

care decisions. The principal may exercise such right of revocation by executing and acknowledging an instrument of revocation, by executing and acknowledging a subsequent health care power of attorney, or in any other manner by which the principal is able to communicate his or her intent to revoke. Such revocation shall become effective only upon communication by the principal to each health care agent named in the revoked health care power of attorney and to the principal's attending physician.

(c) The authority of a health care agent who is the spouse of the principal shall be revoked upon the entry by a court of a decree of divorce or separation between the principal and the health care agent; provided that if the health care power of attorney designates a successor health care agent, the successor shall serve as the health care agent, and the health care power of attorney shall not be revoked.

" § 32A-21. Appointment, resignation, removal, and substitution.

(a) A health care power of attorney may contain provisions relating to the appointment, resignation, removal and substitution of the health care agent.

(b) If all health care agents named in the instrument or substituted, die or for any reason fail or refuse to act, and all methods of substitution have been exhausted, the health care power of attorney shall cease to be effective.

" § 32A-22. Relation of the health care agent to a court-appointed fiduciary and to a general attorney-in-fact.

(a) If, following the execution of a health care power of attorney, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the health care power of attorney shall cease to be effective upon the appointment and qualification of the guardian.

(b) A principal may nominate, by a health care power of attorney, the guardian of the person of the principal if a guardianship proceeding is thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in an unrevoked health care power of attorney, except for good cause shown.

(c) The execution of a health care power of attorney shall not revoke, restrict or otherwise affect any nonhealth care powers granted by the principal to an attorney-in-fact pursuant to a general power of attorney; provided that the powers granted to the health care agent with respect to health care matters shall be superior to any similar powers granted by the principal to an attorney-in-fact under a general power of attorney.

(d) A health care power of attorney may be combined with or incorporated into a general power of attorney which is executed in accordance with the requirements of this Article.

" § 32A-23. Article 2, Chapter 32A, not applicable.

The provisions of Article 2 of this Chapter shall not be applicable to a health care power of attorney executed pursuant to this Article.

" § 32A-24. Reliance on health care power of attorney; defense.

(a) Any physician or other health care provider involved in the medical care of the principal may rely upon the authority of the health care agent contained in a signed and acknowledged health care power of attorney in the absence of actual knowledge of revocation of the health care power of attorney.

(b) All health care decisions made by a health care agent pursuant to a health care power of attorney during any period following a determination that the principal lacks understanding or capacity to make or communicate health care decisions shall have the same effect as if the principal were not incapacitated and were present and acting on his or her own behalf. Any health care provider relying in good faith on the authority of a health care agent shall be protected to the full extent of the power conferred upon the health care agent, and no person so relying on the authority of the health care agent shall be liable, by reason of his reliance, for actions taken pursuant to a decision of the health care agent.

(c) The withholding or withdrawal of life-sustaining procedures by or under the orders of a physician pursuant to the authorization of a health care agent shall not be considered suicide or the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct or a lack of professional competence. Any person, institution or facility, including without limitation the health care agent and the attending physician, against whom criminal or civil liability is asserted because of conduct described in this section, may interpose this section as a defense.

" § 32A-25. Statutory form health care power of attorney.

The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

'(Notice: This document gives the person you designate your health care agent broad powers to make health care decisions for you, including the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive. This power exists only as to those health care decisions for which you are unable to give informed consent.

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health

care agent will have to use due care to act in your best interests and in accordance with this document. Because the powers granted by this document are broad and sweeping, you should discuss your wishes concerning life-sustaining procedures with your health care agent.

Use of this form in the creation of a health care power of attorney is lawful and is authorized pursuant to North Carolina law. However, use of this form is an optional and nonexclusive method for creating a health care power of attorney and North Carolina law does not bar the use of any other or different form of power of attorney for health care that meets the statutory requirements.)

1. Designation of health care agent.

I,....., being of sound mind, hereby appoint

Name:.....

Home Address:.....

Home Telephone Number.....Work Telephone Number.....

as my health care attorney-in-fact (herein referred to as my "health care agent") to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document.

If the person named as my health care agent is not reasonably available or is unable or unwilling to act as my agent, then I appoint the following persons (each to act alone and successively, in the order named), to serve in that capacity: (Optional)

A. Name:.....

Home Address:.....

Home Telephone Number.....Work Telephone Number.....

B. Name:.....

Home Address:.....

Home Telephone Number.....Work Telephone Number.....

Each successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent.

2. Effectiveness of appointment.

(Notice: This health care power of attorney may be revoked by you at any time in any manner by which you are able to communicate your intent to revoke to your health care agent and your attending physician.)

Absent revocation, the authority granted in this document shall become effective when and if the physician or physicians designated below determine that I lack sufficient understanding or capacity to make or communicate decisions relating to my health care and will continue in effect during my incapacity, until my death. This determination shall be made by the following physician or physicians (You may include here a designation of your choice, including your attending physician, or any other physician. You may also name two

or more physicians, if desired, both of whom must make this determination before the authority granted to the health care agent becomes effective.):

.....
.....
.....
3. General statement of authority granted.

Except as indicated in section 4 below, I hereby grant to my health care agent named above full power and authority to make health care decisions on my behalf, including, but not limited to, the following:

- A. To request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information;
- B. To employ or discharge my health care providers;
- C. To consent to and authorize my admission to and discharge from a hospital, nursing or convalescent home, or other institution;
- D. To give consent for, to withdraw consent for, or to withhold consent for, X ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, or podiatrist. This authorization specifically includes the power to consent to measures for relief of pain.
- E. To authorize the withholding or withdrawal of life-sustaining procedures when and if my physician determines that I am terminally ill, permanently in a coma, suffer severe dementia, or am in a persistent vegetative state. Life-sustaining procedures are those forms of medical care that only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of medical treatment which sustain, restore or supplant vital bodily functions. Life-sustaining procedures do not include care necessary to provide comfort or alleviate pain.

I DESIRE THAT MY LIFE NOT BE PROLONGED BY LIFE-SUSTAINING PROCEDURES IF I AM TERMINALLY ILL, PERMANENTLY IN A COMA, SUFFER SEVERE DEMENTIA, OR AM IN A PERSISTENT VEGETATIVE STATE.

- F. To exercise any right I may have to make a disposition of any part or all of my body for medical purposes, to donate my organs, to authorize an autopsy, and to direct the disposition of my remains.

- G. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

4. Special provisions and limitations.

(Notice: The above grant of power is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care. If you wish to limit the scope of your health care agent's powers, you may do so in this section.)

In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions and limitations (Here you may include any specific limitations you deem appropriate such as: your own definition of when life-sustaining treatment should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or unacceptable to you for any other reason.):

.....

5. Guardianship provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate my health care agent acting under this document to be the guardian of my person, to serve without bond or security.

6. Reliance of third parties on health care agent.

- A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions by my health care agent.

- B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or act under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent

pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

7. Miscellaneous provisions.

- A. I revoke any prior health care power of attorney.
- B. My health care agent shall be entitled to sign, execute, deliver, and acknowledge any contract or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of the powers described in this document and to incur reasonable costs on my behalf incident to the exercise of these powers; provided, however, that except as shall be necessary in order to exercise the powers described in this document relating to my health care, my health care agent shall not have any authority over my property or financial affairs.
- C. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of the acts or omissions of my health care agent pursuant to this document, except for willful misconduct or gross negligence.
- D. No act or omission of my health care agent, or of any other person, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this health care power of attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this health care power of attorney may interpose this document as a defense.

8. Signature of principal.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

.....
Signature of Principal

.....
Date

9. Signatures of Witnesses.

I hereby state that the Principal,....., being of sound mind, signed the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of

the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor an employee of the principal's attending physician, nor an employee of the health facility in which the principal is a patient, nor an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal.

Witness:.....Date:.....

Witness:.....Date:.....

STATE OF NORTH CAROLINA

COUNTY OF.....

CERTIFICATE

I,....., a Notary Public for.....County, North Carolina, hereby certify that.....appeared before me and swore to me and to the witnesses in my presence that this instrument is a health care power of attorney, and that he/she willingly and voluntarily made and executed it as his/her free act and deed for the purposes expressed in it.

I further certify that.....and....., witnesses, appeared before me and swore that they witnessed.....sign the attached health care power of attorney, believing him/her to be of sound mind; and also swore that at the time they witnessed the signing (i) they were not related within the third degree to him/her or his/her spouse, and (ii) they did not know nor have a reasonable expectation that they would be entitled to any portion of his/her estate upon his/her death under any will or codicil thereto then existing or under the Intestate Succession Act as it provided at that time, and (iii) they were not a physician attending him/her, nor an employee of an attending physician, nor an employee of a health facility in which he/she was a patient, nor an employee of a nursing home or any group-care home in which he/she resided, and (iv) they did not have a claim against him/her. I further certify that I am satisfied as to the genuineness and due execution of the instrument.

This the.....day of....., 19.....

.....

Notary Public

My Commission Expires:

.....

(A copy of this form should be given to your health care agent and any alternate named in this power of attorney, and to your physician and family members.)

I,....., agree to act as health care agent for....., pursuant to this health care power of attorney.

This the.....day of..... 19.....

" § 32A-26. Health care power of attorney and declaration of desire for natural death.

A health care power of attorney meeting the requirements of this Article may be combined with or incorporated into a Declaration of A Desire For A Natural Death which meets the requirements of Article 23 of Chapter 90 of the General Statutes."

Sec. 2. G.S. 32A-2(9) reads as rewritten:

"(9) Personal Relationships and Affairs. -- To do all acts necessary for maintaining the customary standard of living of the principal, the spouse and children, and other dependents of the principal; to provide medical, dental and surgical care, hospitalization and custodial care for the principal, the spouse, and children, and other dependents of the principal; to continue whatever provision has been made by the principal, for the principal, the spouse, and children, and other dependents of the principal, with respect to automobiles, or other means of transportation; to continue whatever charge accounts have been operated by the principal, for the convenience of the principal, the spouse, and children, and other dependents of the principal, to open such new accounts as the attorney-in-fact shall think to be desirable for the accomplishment of any of the purposes enumerated in this section, and to pay the items charged on such accounts by any person authorized or permitted by the principal or the attorney-in-fact to make such charges; to continue the discharge of any services or duties assumed by the principal, to any parent, relative or friend of the principal; to continue payments incidental to the membership or affiliation of the principal in any church, club, society, order or other organization, or to continue contributions thereto.

In the event the attorney-in-fact named pursuant to G.S. 32A-1 makes a decision regarding the health care of the principal that is contradictory to a decision made by a health care agent appointed pursuant to Article 3 of this Chapter, the decision of the health care agent shall overrule the decision of the attorney-in-fact."

Sec. 3. G.S. 90-321 reads as rewritten:

" § 90-321. Right to a natural death.

(a) As used in this Article the term:

(1) 'Declarant' means a person who has signed a declaration in accordance with subsection (c);

- (2) 'Extraordinary means' is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;
- (3) 'Physician' means any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of ~~North Carolina~~, Carolina;
- (4) 'Persistent vegetative state' is a medical condition whereby in the judgment of the attending physician the patient suffers from a sustained complete loss of self-aware cognition and, without the use of extraordinary means or artificial nutrition or hydration, will succumb to death within a short period of time.

(b) If a person has declared, in accordance with subsection (c) below, a desire that his life not be prolonged by extraordinary ~~means~~; means or by artificial nutrition or hydration, and the declaration has not been revoked in accordance with subsection (e); and

- (1) It is determined by the attending physician that the declarant's present condition is
 - a. Terminal; and
 - b. Incurable; ~~and~~ or
 - c. Diagnosed as a persistent vegetative state; and
- (2) There is confirmation of the declarant's present condition as set out above in subdivision (b)(1) by a physician other than the attending physician;

then extraordinary means or artificial nutrition or hydration, as specified by the declarant, may be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) The attending physician may rely upon a signed, witnessed, dated and proved declaration:

- (1) Which expresses a desire of the declarant that ~~no~~ extraordinary ~~means~~ means or artificial nutrition or hydration not be used to prolong his life if his condition is determined to be terminal and incurable; incurable, or if the declarant is diagnosed as being in a persistent vegetative state; and
- (2) Which states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the extraordinary ~~means~~; means or artificial nutrition or hydration; and
- (3) Which has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are not related within the third

degree to the declarant or to the declarant's spouse, (ii) do not know or have a reasonable expectation that they would be entitled to any portion of the estate of the declarant upon his death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) are not the attending physician, or an employee of the attending physician, or an employee of a health facility in which the declarant is a patient, or an employee of a nursing home or any group-care home in which the declarant resides, and (iv) do not have a claim against any portion of the estate of the declarant at the time of the declaration; and

- (4) Which has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in subsection (d) below.

(d) The following form is specifically determined to meet the requirements above:

'Declaration Of A Desire For A Natural Death'

~~'I,, being of sound mind, desire that my life not be prolonged by extraordinary means if my condition is determined to be terminal and incurable. I am aware and understand that this writing authorizes a physician to withhold or discontinue extraordinary means.~~

'I,, being of sound mind, desire that, as specified below, my life not be prolonged by extraordinary means or by artificial nutrition or hydration if my condition is determined to be terminal and incurable or if I am diagnosed as being in a persistent vegetative state. I am aware and understand that this writing authorizes a physician to withhold or discontinue extraordinary means or artificial nutrition or hydration, in accordance with my specifications set forth below:

(Initial any of the following, as desired):

'..... If my condition is determined to be terminal and incurable, I authorize the following:

..... My physician may withhold or discontinue extraordinary means only.

..... In addition to withholding or discontinuing extraordinary means if such means are necessary, my physician may withhold or discontinue either artificial nutrition or hydration, or both.

'..... If my physician determines that I am in a persistent vegetative state, I authorize the following:

..... My physician may withhold or discontinue extraordinary means only.

..... In addition to withholding or discontinuing extraordinary means if such means are necessary, my physician may withhold or discontinue either artificial nutrition or hydration, or both.

'This theday of.....

Signature.....

'I hereby state that the declarant....., being of sound mind signed the above declaration in my presence and that I am not related to the declarant by blood or marriage and that I do not know or have a reasonable expectation that I would be entitled to any portion of the estate of the declarant under any existing will or codicil of the declarant or as an heir under the Intestate Succession Act if the declarant died on this date without a will. I also state that I am not the declarant's attending physician or an employee of the declarant's attending physician, or an employee of a health facility in which the declarant is a patient or an employee of a nursing home or any group-care home where the declarant resides. I further state that I do not now have any claim against the declarant.

Witness.....

Witness.....

The clerk or the assistant clerk, or a notary public may, upon proper proof, certify the declaration as follows:

'Certificate'

'I, Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one as appropriate) forCounty hereby certify that....., the declarant, appeared before me and swore to me and to the witnesses in my presence that this instrument is his Declaration Of A Desire For A Natural Death, and that he had willingly and voluntarily made and executed it as his free act and deed for the purposes expressed in it.

'I further certify that and, witnesses, appeared before me and swore that they witnessed, declarant, sign the attached declaration, believing him to be of sound mind; and also swore that at the time they witnessed the declaration (i) they were not related within the third degree to the declarant or to the declarant's spouse, and (ii) they did not know or have a reasonable expectation that they would be entitled to any portion of the estate of the declarant upon the declarant's death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it provides at that time, and (iii) they were not a physician attending the declarant or an employee of an attending physician or an employee of a health facility in which the declarant

was a patient or an employee of a nursing home or any group-care home in which the declarant resided, and (iv) they did not have a claim against the declarant. I further certify that I am satisfied as to the genuineness and due execution of the declaration.

'This the day of

Clerk (Assistant Clerk) of Superior Court
or Notary Public (circle one as
appropriate) for the County of
.....'

The above declaration may be proved by the clerk or the assistant clerk, or a notary public in the following manner:

- (1) Upon the testimony of the two witnesses; or
- (2) If the testimony of only one witness is available, then
 - a. Upon the testimony of such witness, and
 - b. Upon proof of the handwriting of the witness who is dead or whose testimony is otherwise unavailable, and
 - c. Upon proof of the handwriting of the declarant, unless he signed by his mark; or upon proof of such other circumstances as will satisfy the clerk or assistant clerk of the superior court, or a notary public as to the genuineness and due execution of the declaration.
- (3) If the testimony of none of the witnesses is available, such declaration may be proved by the clerk or assistant clerk, or a notary public
 - a. Upon proof of the handwriting of the two witnesses whose testimony is unavailable, and
 - b. Upon compliance with paragraph c of subdivision (2) above.

Due execution may be established, where the evidence required above is unavoidably lacking or inadequate, by testimony of other competent witnesses as to the requisite facts.

The testimony of a witness is unavailable within the meaning of this subsection when the witness is dead, out of the State, not to be found within the State, insane or otherwise incompetent, physically unable to testify or refuses to testify.

If the testimony of one or both of the witnesses is not available the clerk or the assistant clerk, or a notary public or superior court may, upon proper proof, certify the declaration as follows:

'Certificate'

'I, Clerk (Assistant Clerk) of Court for the Superior Court or Notary Public (circle one as appropriate) of..... County hereby certify that based upon the evidence before me I am satisfied as to the genuineness and due execution of the attached declaration by, declarant, and that the declarant's signature was

witnessed by..... and who at the time of the declaration met the qualifications of G.S. 90-321(c)(3).

'This the day of

.....
Clerk (Assistant Clerk) of Superior
Court or Notary Public (circle one
as appropriate) for
County.'

(e) The above declaration may be revoked by the declarant, in any manner by which he is able to communicate his intent to revoke, without regard to his mental or physical condition. Such revocation shall become effective only upon communication to the attending physician by the declarant or by an individual acting on behalf of the declarant.

(f) The execution and consummation of declarations made in accordance with subsection (c) shall not constitute suicide for any purpose.

(g) No person shall be required to sign a declaration in accordance with subsection (c) as a condition for becoming insured under any insurance contract or for receiving any medical treatment.

(h) The withholding or discontinuance of extraordinary means and/or the withholding or discontinuance of either artificial nutrition or hydration, or both in accordance with this section shall not be considered the cause of death for any civil or criminal purposes nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense.

(i) Any certificate in the form provided by this section prior to July 1, 1979, shall continue to be valid.

(j) The form provided by this section may be combined with or incorporated into a health care power of attorney form meeting the requirements of Article 3 of Chapter 32A of the General Statutes; provided, however, that the resulting form shall be signed, witnessed, and proved in accordance with the provisions of this section."

Sec. 4. G.S. 90-322 reads as rewritten:

" § 90-322. *Procedures for natural death in the absence of a declaration.*

(a) If a person is comatose and there is no reasonable possibility that he will return to a cognitive sapient state or is mentally incapacitated, and:

- (1) It is determined by the attending physician that the person's present condition is:
 - a. Terminal; and
 - b. Incurable; ~~and~~ or

- c. ~~Irreversible; and~~ Diagnosed as a persistent vegetative state; and
- (2) There is confirmation of the person's present condition as set out above in this subsection, in writing by a physician other than the attending physician; and
- (3) A vital function of the person could be restored by extraordinary means or a vital function of the person is being sustained by extraordinary means; or
- (4) The life of the person could be or is being sustained by artificial nutrition or hydration;

then, extraordinary means or artificial nutrition or hydration may be withheld or discontinued in accordance with subsection (b).

(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) and no instrument has been executed as provided in G.S. 90-321 the extraordinary means ~~to prolong life~~ or artificial nutrition or hydration may be withheld or discontinued upon the direction and under the supervision of the attending physician with the concurrence (i) ~~of the person's spouse, of a health care agent appointed pursuant to a health care power of attorney meeting the requirements of Article 3 of Chapter 32A of the General Statutes,~~ or (ii) of a guardian of the person, or (iii) of the person's spouse, or (iv) of a majority of the relatives of the first degree, in that order. If none of the above is available then at the discretion of the attending physician the extraordinary means or artificial nutrition or hydration may be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) Repealed by Session Laws 1979, c. 715, s. 2.

(d) The withholding or discontinuance of such extraordinary means or artificial nutrition or hydration shall not be considered the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense."

Sec. 5. This act is effective October 1, 1991.

In the General Assembly read three times and ratified this the 11th day of July, 1991.

H.B. 956

CHAPTER 640

AN ACT TO BAN CORPORAL PUNISHMENT IN DAY-CARE PROGRAMS OTHER THAN CHURCH DAY-CARE PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-91(10) reads as rewritten:

- "(10) Each operator or staff member shall truly and honestly show each child in ~~his~~ that person's care true love, devotion and tender care.

Each day-care facility shall have a written policy on discipline, ~~which policy describes~~ describing the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

The use of corporal punishment as a form of discipline is prohibited in day-care facilities and may not be used by any operator or staff member of any day-care facility, except that corporal punishment may be used in church day-care facilities as defined in G.S. 110-106, only if (i) the church day-care facility files with the Department a notice stating that corporal punishment is part of the religious training of its program, and (ii) the church day-care facility clearly states in its written policy of discipline that corporal punishment is part of the religious training of its program. The written policy on discipline of nonchurch day-care facilities shall clearly state the prohibition on corporal punishment."

Sec. 2. G.S. 110-101 reads as rewritten:

"§ 110-101. *Registration; minimum standards for child day care homes.*

It shall be unlawful for any person to operate a day care home unless ~~such~~ the day care home is registered with the Department in accordance with the requirements for registration adopted by the Commission. The person who is registered shall be the individual who is on site providing care. A registration certificate shall be issued and remain valid for a two-year period unless revoked, suspended or modified. Each home shall display its current registration certificate in a prominent place. The registration certificate shall remain the property of the State. Day care homes shall comply with the reasonable minimum standards for health, safety, and sanitation adopted by the Commission. Each day care home shall be located in a residence or other building which meets the requirements of the North Carolina Building Code under standards developed by the Building Code Council in consultation with the Division of Facility Services, and subject to adoption by the Commission, specifically for day care homes.

The use of corporal punishment as a form of discipline is prohibited and may not be used by any operator or staff person of any day care home, except that corporal punishment may be used in day care homes that are religious sponsored child day care homes under G.S. 110-106.1, only if the day care home files with the Department a notice stating that corporal punishment is part of the religious training of its program."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 11th day of July, 1991.

H.B. 1073

CHAPTER 641

AN ACT TO MAKE CERTAIN CHANGES IN BALLOT INSTRUCTIONS AND BALLOT FORMAT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-140(a) reads as rewritten:

"(a) Kinds of General Election Ballots: Right to Combine. -- For purposes of general elections, there shall be seven kinds of official ballots entitled:

- (1) Ballot for presidential electors
- (2) Ballot for United States Senator
- (3) Ballot for member of the United States House of Representatives
- (4) State ballot
- (5) County ballot
- (7) Ballot for constitutional amendments and other propositions submitted to the people.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing non-legislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a multi-seat contest.

If the State Board of Elections divides the State ballot into two or more ballots, all candidates for superior court shall appear on the same ballot except that the State Board of Elections may divide the election of superior court judges into two ballots either because of length of the ballot or to provide a separate ballot for multi-seat races but only superior court judges shall be on those ballots, and all candidates for the Appellate Division shall appear on the same ballot."

Sec. 2. G.S. 163-140(b)(4) reads as rewritten:

"(4) State Ballot: Beneath the title and general instructions set out in this subsection, the ballot for single-seat contests for State officers, and for all State officers where mechanical voting machines are used (including judges of the superior court) shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having candidates for State offices and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words 'Unaffiliated Candidates.' Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: 'For a straight ticket, mark within this circle.' With distinct black lines, the State Board of Elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of unaffiliated candidates shall be printed in the appropriate office section of the column

headed 'Unaffiliated Candidates.' At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type, and the words 'you must also' in instruction c. shall be underlined:

- a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
- b. ~~You may vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party. In any multi-seat race where a party circle is marked and you vote for candidates of another party, in order for your vote to count for any candidates for that office of the party for which you marked the party circle you must make a cross (X) mark opposite the name of those candidate(s).~~
- c. ~~You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.~~
- b. You may vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
- c. You may also vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of any candidate you choose of a different party. In any multi-seat race where a party circle is marked and you vote for candidates of another party, you must also make a cross (X) mark opposite the name of any candidate you choose of the party for which you marked the party circle to assure your vote will count.
- d. If you tear or deface or wrongly mark this ballot, return it and get another.'

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections. If the State ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot."

Sec. 3. G.S. 163-140(b)(5) reads as rewritten:

"(5) County Ballot: Beneath the title and general instructions set out in this subsection, the ballot for single-seat contests for county officers (including district attorney for the prosecutorial district in which the county is situated, district judge for the district court district in which the county is situated, and members of the General Assembly in the senatorial and representative districts in which the county is situated), and for all county offices where mechanical voting machines are used, shall be divided into parallel columns separated by distinct black lines. The county board of elections shall assign a separate column to each political party having candidates for the offices on the ballot and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type and at the head of the column for unaffiliated candidates shall be printed in large type the words 'Unaffiliated Candidates.' Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: 'For a straight ticket, mark within this circle.' With distinct black lines, the county board of elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed 'Unaffiliated Candidates.' At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type, and the words 'you must also' in instruction c. shall be underlined:

- 'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
- b. ~~You may vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party. In any multi-seat race where a party circle is marked and you vote for candidates of another party, in order for your vote to count for any candidates for that office of the party for which you marked the party circle you must make a cross (X) mark opposite the name of those candidate(s).~~
- c. ~~You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.~~
- b. You may vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
- c. You may also vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of any candidate you choose of a different party. In any multi-seat race where a party circle is marked and you vote for candidates of another party, you must also make a cross (X) mark opposite the name of any candidate you choose of the party for which you marked the party circle to assure your vote will count.
- d. If you tear or deface or wrongly mark this ballot, return it and get another.'

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the county board of elections. If the county ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot."

Sec. 4. G.S. 163-140(f) reads as rewritten:

"(f) Multi-seat Races. -- The General Assembly finds that since the federal court opinion voiding the law which provided that a straight-ticket ballot shall take precedence in counting over a ballot marked for individual candidates, confusion has occurred in the counting of ballots in multi-seat races. In order to minimize the confusion of instructions for marking ballots in multi-seat races, which must be

different than those in single-seat races, the General Assembly finds it necessary that these ballots be printed separately, except in the case of mechanical voting machines. On such machines, where it is physically impossible to vote both a straight-ticket and for an individual candidate, without pulling up the lever of an individual candidate, clearly showing the voter's intention, it is unnecessary to have a separate ballot for multi-seat races, and having such a separate ballot would result in more columns and rows on the machine than the mechanical machine can handle.

Multi-seat races in partisan general elections, which except as provided in this section would have appeared on the State ballot or county ballot, and except for multi-seat races on mechanical voting machines, shall be placed on a separate multi-seat ballot or ballots, which shall not be combined with any ballot other than a multi-seat ballot. Beneath the title and general instructions set out in this subsection, the ballot(s) for multi-seat races shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having candidates in multi-seat races and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words 'Unaffiliated Candidates.' Below the party name in each column shall be printed a circle, one-half inch in diameter, and around which shall be plainly printed the following instruction: 'For a straight ticket, mark within this circle.' With distinct black lines, the State Board of Elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each group of offices to be filled. On a single line at the top of each section shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed 'Unaffiliated Candidates.' At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy red type to contrast with the type of the rest of the ballot:

- a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party of your choice.
- b. You may vote a split ticket in one of two ways:
 - (1) By making a cross mark opposite the name of each candidate for whom you wish to vote and making no mark in the party circle, or
 - (2) By marking the party circle and then making a cross mark opposite the name of each candidate you choose of the party whose circle you marked as well as each candidate you choose of any other party in the race(s) where you wish to vote a split ticket.
- c. If you tear or deface or wrongly mark this ballot, return it and get another.'

Ballot instructions need not be printed in red type except on the separate ballot(s) for multi-seat races."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1991.

S.B. 283

CHAPTER 642

AN ACT TO AMEND THE WEIGHTS AND MEASURES ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 81A-26 reads as rewritten:

"(a) Whenever the quantity is determined by the seller, bulk sales in excess of twenty dollars (\$20.00) and all bulk deliveries of heating fuel shall be accompanied by a delivery ticket containing the following information:

- (1) The name and address of the vendor and the name of the purchaser,
- (2) The date delivered,
- (3) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity,
- (4) The identity of the most descriptive terms commercially practicable, including any quality representation made in connection with the sale, ~~and~~
- (5) The count of individually wrapped packages, if more than ~~one, one, and~~
- (6) For heating fuels which are liquids and gases, the price per gallon and any other charges associated with the delivery. This subdivision applies only to residential, retail deliveries.

(b) Any invoice corresponding to the delivery ticket required under the preceding subsection (a) shall contain the information set forth in the preceding subdivisions (a)(1) through (6), and shall also state the amount of sales tax, if any, and the grand total. This subsection does not apply to any subsequent billing when the seller has previously complied with the requirements of subsections (a) and (b) of this section.

(c) Whenever a seller quotes a price or other terms and conditions to a potential purchaser under this section, if those terms and conditions include a low, introductory price, other reduced charges, or other special conditions not representative of the prices or terms and conditions that apply to existing customers of the same type or class, the seller shall clearly and conspicuously disclose: (i) those facts, (ii) the price and terms and conditions that would on that date apply to existing customers of the same type or class as the potential purchaser, and (iii) the amount of time that the introductory or unrepresentative price or terms and conditions will remain in effect."

Sec. 2. Article 3 of Chapter 81A of the General Statutes is amended by adding the following new sections:

" § 81A-30.1. Civil penalties.

A civil penalty of not more than five thousand dollars (\$5,000) for each violation may be assessed by the Commissioner against any person who willfully violates this Chapter. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. No civil penalty shall be assessed under this section unless the person has been given an opportunity for a hearing pursuant to the Administrative Procedure Act. If not paid within 30 days after the effective date of a final decision by the Commissioner, the penalty may be collected by any lawful manner for the collection of a debt.

Sec. 3. This act becomes effective October 1, 1991. This act shall not affect pending litigation.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

S.B. 329

CHAPTER 643

AN ACT TO MAKE VARIOUS TECHNICAL AND CLARIFYING AMENDMENTS TO THE NURSING PRACTICE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.21(b) reads as rewritten:

"(b) Selection. -- The North Carolina Board of Nursing shall conduct an election each year to fill vacancies of nurse members of

the Board scheduled to occur during the next year. Nominations of candidates for election of registered nurse members shall be made by written petition signed by not less than 10 registered nurses eligible to vote in the election. Nominations of candidates for election of licensed practical nurse members shall be made by written petition signed by not less than 10 licensed practical nurses eligible to vote in the election. Every licensed registered nurse holding an active license shall be eligible to vote in the election of registered nurse board members. Every licensed practical nurse holding an active license shall be eligible to vote in the election of licensed practical nurse board members. The list of nominations shall be filed with the Board after January 1 of the year in which the election is to be held and no later than midnight of the first day of April of such year. Before preparing ballots, the Board shall notify each person who has been duly nominated of his nomination and request permission to enter his name on the ballot. A member of the Board who is nominated to succeed himself and who does not withdraw his name from the ballot is disqualified to participate in conducting the election. Elected members shall begin their term of office on January 1 of the year following their election.

Nominations of persons to serve as public members of the Board may be made to the Governor by any citizen or group within the State. The Governor shall appoint the two public members to the Board.

Board members shall be commissioned by the Governor upon their election or appointment."

Sec. 2. G.S. 90-171.30 reads as rewritten:

" § 90-171.30. *Licensure by examination.*

At least twice each year the Board shall give an examination at the time and place it determines, to applicants for licensure to practice as a registered nurse or licensed practical nurse. The Board shall give advance notice to applicants and to persons conducting approved nursing programs of the time and place of each examination. The Board shall adopt regulations, not inconsistent with this Article, governing qualifications of applicants, the conduct of applicants during the examination, and the conduct of the examination. The applicants shall be required to pass ~~a written~~ an examination approved and administered by the Board. When the Board determines that an applicant has passed the required examination, submitted the required fee, and has demonstrated to the Board's satisfaction that he or she is mentally and physically competent to practice nursing, the Board shall issue a license to the applicant."

Sec. 3. G.S. 90-171.33 reads as rewritten:

" § 90-171.33. *Temporary license.*

The Board shall issue a nonrenewable temporary license to persons ~~applying for licensure under G.S. 90-171.30~~ who are applying for licensure under G.S. 90-171.30, and who are scheduled for the licensure examination at the first opportunity after graduation, for a period not to exceed the lesser of ~~six~~ nine months or the date of applicant's ~~receipt~~ notification of the results of the licensure examination. The Board shall revoke the temporary license of any person who does not take the examination as scheduled, or who has failed the examination for licensure as provided by this act. The Board shall issue a nonrenewable temporary license to persons applying for licensure under G.S. 90-171.32 for a period not to exceed the lesser of six months or until the Board determines whether the applicant is qualified to practice nursing in North Carolina. Temporary licensees may perform patient-care services within limits defined by the Board. In defining these limits, the Board shall consider the ability of the temporary licensee to safely and properly carry out patient-care services. Temporary licensees shall be held to the standard of care of a fully licensed nurse."

Sec. 4. G.S. 90-171.37 reads as rewritten:

" § 90-171.37. *Revocation, suspension, or denial of licensure.*

The Board shall initiate an investigation upon receipt of information about any practice that might violate any provision of this Article or any rule or regulation promulgated by the Board. In accordance with the provisions of Chapter 150B of the General Statutes, the Board may require remedial education, issue a letter of reprimand, restrict, revoke, or suspend any license to practice nursing in North Carolina or deny any application for licensure if the Board determines that the nurse or applicant:

- (1) Has given false information or has withheld material information from the Board in procuring or attempting to procure a license to practice nursing;
- (2) Has been convicted of or pleaded guilty or *nolo contendere* to any crime which indicates that the nurse is unfit or incompetent to practice nursing or that the nurse has deceived or defrauded the public;
- (3) Has a mental or physical disability or uses any drug to a degree that interferes with his or her fitness to practice nursing;
- (4) Engages in conduct that endangers the public health;
- (5) Is unfit or incompetent to practice nursing by reason of deliberate or negligent acts or omissions regardless of whether actual injury to the patient is established;
- (6) Engages in conduct that deceives, defrauds, or harms the public in the course of professional activities or services; or

(7) Has ~~willfully~~ violated any provision of this ~~Article~~ Article, ~~or of regulations enacted by the Board.~~

(8) Has willfully violated any rules enacted by the Board.

The Board may take any of the actions specified above in this section when a registered nurse approved to perform medical acts has violated rules governing the performance of medical acts by a registered nurse; provided this shall not interfere with the authority of the Board of Medical Examiners to enforce rules and regulations governing the performance of medical acts by a registered nurse.

The Board may reinstate a revoked license or remove licensure restrictions when it finds that the reasons for revocation or restriction no longer exist and that the nurse or applicant can reasonably be expected to safely and properly practice nursing."

Sec. 5. G.S. 90-171.38 reads as rewritten:

"§ 90-171.38. *Standards for nursing programs.*

A nursing program may be operated under the authority of a general hospital, ~~or an approved post-secondary educational institution, an educational institution or agency, or any other authority satisfactory to the Board.~~ The Board shall establish, revise, or repeal standards for nursing programs. These standards shall specify program requirements, curricula, faculty, students, facilities, resources, administration, and describe the approval process. ~~The standards approved by the Board and in effect on June 30, 1980, shall be the prescribed standards. Before making any substantive change in the standards the Board shall hold a hearing in accordance with Chapter 150B.~~ Any institution desiring to establish a new nursing program shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board. Those standards shall be designed to ensure that graduates of those programs have the educational training to safely and properly education necessary to safely and competently practice nursing. The Board shall encourage the continued operation of all present programs that meet the standards approved by the Board ~~and the Board shall promote the establishment of additional programs.~~ Board."

Sec. 6. G.S. 90-171.42(b) reads as rewritten:

"(b) If the program offers to teach nurses to perform advance skills, the Board may grant approval for the program and the performance of the advanced skills by those successfully completing the program when it finds that the nature of the procedures taught in the program and the program facilities and faculty are such that a nurse successfully completing the program can reasonably be expected to carry out those procedures safely and ~~properly,~~ competently."

Sec. 7. G.S. 90-171.44 reads as rewritten:

"§ 90-171.44. *Prohibited acts.*

It shall be a violation of this Article for any person to:

- (1) Sell, fraudulently obtain, or fraudulently furnish any nursing diploma or aid or abet therein;
- (2) Practice nursing under cover of any fraudulently obtained license;
- (3) Practice nursing without a license;
- (4) Conduct a nursing program or a refresher course for activation of a license, that is not approved by the Board; or
- (5) Employ unlicensed persons to practice nursing in violation of this Article."

Sec. 8. G.S. 90-171.47 reads as rewritten:

" § 90-171.47. *Reports: immunity from suit.*

Any person who has reasonable cause to suspect misconduct or incapacity of a licensee or who has reasonable cause to suspect that any person is in violation of this Article, including those actions specified in G.S. 90-171.37 (1) through (7), ~~should~~ shall report the relevant facts to the Board. Upon receipt of such charge or upon its own initiative, the Board may give notice of an administrative hearing or may, after diligent investigation, dismiss unfounded charges. Any person making a report pursuant to this section shall be immune from any criminal prosecution or civil liability resulting therefrom unless such person knew the report was false or acted in reckless disregard of whether the report was false."

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

S.B. 339

CHAPTER 644

AN ACT TO MAKE VARIOUS SUBSTANTIVE AMENDMENTS TO THE INSURANCE LAWS AND OTHER LAWS RELATED TO THE DEPARTMENT OF INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-8-35 reads as rewritten:

" § 58-8-35. *Contingent liability printed on policy.*

Every insurance company licensed to do business in this State shall print upon the ~~filing face of its policies~~ front of each policy and application in clear and explicit language the full contingent liability of its members. The language shall include the following statements printed in bold red type for each unlimited assessment policy: 'CAUTION: THIS IS AN ASSESSMENT POLICY. YOU MAY BE LIABLE FOR THE PAYMENT OF LOSSES, RESERVES, AND/OR

EXPENSES INCURRED WHILE YOU ARE A MEMBER OF OUR ASSOCIATION."

Sec. 2. Article 58 of Chapter 58 of the General Statutes is amended by adding a new section to read:

" § 58-58-86. Insurable interest of charitable organizations.

If an organization described in section 501(c)(3) of the Internal Revenue Code purchases or receives by assignment, before, on, or after the effective date of this section, life insurance on an insured who consents to the purchase or assignment, the organization is deemed to have an insurable interest in the insured person's life."

Sec. 3. G.S. 58-58-90 reads as rewritten:

" § 58-58-90. Construction of §§ 58-58-75 to 58-58-85. Construction.

Sections 58-58-75 to 58-58-85 shall not be construed to G.S. 58-58-75, 58-58-80, 58-58-85, and 58-58-86 do not limit or abridge any insurable interest or right to insure now existing at common law or by statute, and shall be construed liberally to sustain insurable interest, whether as a declaration of existing law or as an extension of or addition to existing law."

Sec. 3.1. G.S. 58-31-60(b) reads as rewritten:

"(b) Appointment of Employee Insurance Committee Members. -- The members of the Employee Insurance Committee shall be appointed by the head of the payroll unit. The Committee shall consist of not less than five or more than nine individuals a majority of whom have been employed in the payroll unit for at least one year. The committee members shall, except where necessary initially to establish the rotation herein prescribed, serve three-year terms with approximately one-third of the terms expiring annually. Committee membership make-up shall fairly represent the work force in the payroll unit and be selected without regard to any political or other affiliations. It shall be the duty of the payroll unit head to assure that the Employee Insurance Committee is completely autonomous in its selection of insurance products and insurance companies and that no member of the Employee Insurance Committee has any conflict of interest in serving on the Committee. A committee on employee benefits elected or appointed by the faculty representative body of a constituent institution of The University of North Carolina shall be deemed constituted and functioning as an employee insurance committee in accordance with this section. Any decision rendered by the Employee Insurance Committee where the autonomy of the Committee or a conflict of interest is questioned shall be subject to appeal pursuant to the Administrative Procedure Act, or in the case of departments, boards and commissions which are specifically exempt from the Administrative Procedure Act, pursuant to the appeals procedure prescribed for such department, board or commission.

All payroll units in existence on May 21, 1985, shall continue to be deemed payroll units, regardless of any subsequent consolidation of such payroll units, for purposes of the appointment of the members of the Employee Insurance Committee in order to assure such units the continuing ability to meet the needs and desires of the employees of such units by having the right to select insurance carriers and insurance products. No Employee Insurance Committee shall be created for employees represented by a previously existing committee. Any such duplicative Employee Insurance Committees are hereby disbanded. In the event of the consolidation of a payroll unit, the head of the former payroll unit shall appoint the members of the Committee in accordance with the provisions of this section."

Sec. 4. G.S. 58-41-50 is amended by adding a new subsection to read:

"(g) An insurer subject to this Article may develop and use an individual form or rate as a result of the uniqueness of a particular risk. The form or rate shall be developed, filed, and used in accordance with rules adopted by the Commissioner."

Sec. 5. G.S. 58-43-5 reads as rewritten:

"§ 58-43-5. Limitation as to amount and term; indemnity contracts for difference in actual value and cost of ~~replacement~~, replacement; functional replacement.

No insurance company or agent shall knowingly issue any fire insurance policy upon property within this State for an amount which, together with any existing insurance thereon, exceeds the fair value of the property, nor for a longer term than seven years: Provided, any fire insurance company authorized to transact business in this State may, by appropriate riders or endorsements or otherwise, provide insurance indemnifying the insured for the difference between the actual value of the insured property at the time any loss or damage occurs, and the amount actually expended to repair, rebuild or replace on the premises described in the policy, or some other location within the State of North Carolina with new materials of like size, kind and quality, ~~such property as that~~ that has been damaged or destroyed by fire or other perils insured against, against: Provided further, that the Commissioner may approve forms that permit functional replacement by the insurance company, at the insured's option. Functional replacement means to replace the property with property that performs the same function when replacement with materials of like size, kind, and quality is not possible, necessary, or less costly than obsolete, antique, or custom construction materials and methods. Forms and rating plans may also provide for credits when functional replacement cost coverage is provided. Policies issued in violation of this section

are binding upon the company issuing them, but the company is liable for the forfeitures by law prescribed for such violation."

Sec. 6. G.S. 58-28-5(a) reads as rewritten:

"(a) Except as hereinafter provided, it shall be unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in G.S. 58-28-10, without a certificate of authority issued by the Commissioner. This section shall not apply to the following acts or transactions:

- (1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with Article 21 of this Chapter;
- (2) Contracts of reinsurance;
- (3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy;
- (4) Transactions in this State involving group life insurance, group annuities, or group, blanket, or franchise accident and health insurance where the master policy of such insurance was lawfully issued and delivered in a state where the company was authorized to transact business;
- (5) Transactions in this State involving all policies of insurance issued prior to July 1, 1967;
- (6) The procuring of contracts of insurance issued to a nuclear insured;
- (7) Insurance independently procured, as specified in subsection (b) of this ~~section~~, section;
- (8) Insurance on vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies, as distinguished from inland marine insurance policies."

Sec. 7. G.S. 58-7-15 reads as rewritten:

"§ 58-7-15. *Kinds of insurance authorized.*

The kinds of insurance ~~which~~ that may be authorized in this State, subject to the other provisions of Articles 1 through 64 of this Chapter, are set forth in ~~the following paragraphs, this section.~~ Except to the extent an insurer participates in a risk sharing plan under Article 42 of this ~~Chapter~~ Chapter, ~~nothing herein contained shall require~~ in this section requires any insurer to insure every kind of risk ~~which~~ that it is authorized to insure. Except to the extent an insurer participates in a risk sharing plan under Article 42 of this

~~Chapter~~ Chapter, no insurer may transact any other business than that specified in its charter and articles of ~~association, association or incorporation.~~ The power to do any kind of insurance against loss of or damage to property ~~shall include~~ includes the power to insure all lawful interests in ~~such the property~~ and to insure against loss of use and ~~occupancy, occupancy~~ and rents and profits resulting therefrom; but no kind of insurance ~~shall be deemed to include~~ includes life insurance or insurance against legal liability for personal injury or death unless specified ~~herein, in this section.~~ In addition to any power to engage in any other kind of business than an insurance business ~~which~~ that is specifically conferred by the provisions of Articles 1 through 64 of this Chapter, any insurer authorized to do business in this State may engage in such other ~~kind or~~ kinds of business to the extent necessarily or properly incidental to the ~~kind or~~ kinds of insurance business ~~which~~ that it is authorized to do in this State. Each of the following ~~paragraphs~~ indicates the scope of the kind of insurance business ~~specified therein; specified:~~

- (1) ~~'Life insurance, insurance'~~ 'insurance', meaning every insurance upon the lives of human beings and every insurance appertaining thereto. The business of life insurance ~~shall be deemed to include~~ includes the granting of endowment benefits; additional benefits in the event of death by accident or accidental means; additional benefits operating to safeguard the contract from lapse, or to provide a special surrender value, in the event of total and permanent disability of the insured, including industrial sick benefit; and optional modes of settlement of proceeds.
- (2) ~~'Annuities, Annuities'~~ 'Annuities', meaning all ~~agreement agreements~~ to make periodical payments, whether in fixed or variable dollar amounts, or both, ~~where the making or continuance of all or of some of a series of such payments, or the amount of any such payment, is dependent upon the continuance of human life, except payments made under the authority of subdivision (1), at specified intervals.~~
- (3) ~~'Accident and health insurance, insurance'~~ 'insurance', meaning meaning:
 - a. Insurance against death or personal injury by accident or by any specified ~~kind or~~ kinds of accident and insurance against sickness, ailment or bodily injury except as specified in paragraph b following; and
 - b. ~~Noncancellable~~ 'Noncancelable disability insurance.' meaning insurance against disability resulting from sickness, ailment or bodily injury (but not including insurance solely against accidental injury), under any

contract ~~which~~ that does not give the insurer the option to cancel or otherwise terminate the contract at or after one year from its effective date or renewal date.

- (4) 'Fire ~~insurance.~~ insurance', meaning insurance against loss of or damage to any property resulting from fire, including loss or damage incident to the extinguishment of a fire or to the salvaging of property in connection therewith.
- (5) 'Miscellaneous property ~~insurance.~~ insurance', meaning loss of or damage to property resulting from
- a. Lightning, smoke or smudge, windstorm, tornado, cyclone, earthquake, volcanic eruption, rain, hail, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, or
 - b. Insects, or blights, or from disease of such property other than animals, or
 - c. Electrical disturbance causing or concomitant with a fire or an explosion in public service or public utility property, or
 - d. Bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, or explosion; but not including any kind of insurance specified in subdivision (9), except insurance against loss or damage to property resulting from:
 1. Explosion of pressure vessels (except steam boilers of more than 15 pounds pressure) in buildings designed and used solely for residential purposes by not more than four families.
 2. Explosion of any kind originating outside of the insured building or outside of the building containing the property insured.
 3. Explosion of pressure vessels ~~which~~ that do not contain steam or ~~which~~ that are not operated with steam coils or steam jackets.
 4. Electrical disturbance causing or concomitant with an explosion in public service or public utility property.
- (6) 'Water damage insurance,' meaning insurance against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of

sprinklers, ~~pumps~~ pumps, or other apparatus erected for extinguishing fires or of water pipes or other conduits or ~~containers~~, containers; or resulting from casual water entering through leaks or openings in buildings or by seepage through building ~~walls~~, walls; but not including loss or damage resulting from flood or the rising of the waters of the ocean or its tributaries; and including insurance against accidental injury of such sprinklers, pumps, fire apparatus, ~~conduits~~ conduits, or containers.

- (7) 'Burglary and theft insurance,' meaning:
- a. Insurance against loss of or damage to any property resulting from burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, ~~confiscation~~ confiscation, or wrongful conversion, disposal or concealment by any person or persons, or from any attempt at any of the foregoing, and
 - b. Insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, ~~acceptances~~ acceptances, or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail.
- (8) 'Glass insurance,' meaning insurance against loss of or damage to glass and its appurtenances resulting from any cause.
- (9) 'Boiler and machinery insurance,' meaning insurance against loss of or damage to any property of the insured, resulting from the explosion of or injury to:
- a. Any boiler, heater or other fired pressure vessel;
 - b. Any unfired pressure vessel;
 - c. Pipes or containers connected with any of said boilers or vessels;
 - d. Any engine, turbine, compressor, pump or wheel;
 - e. Any apparatus generating, transmitting or using electricity;
 - f. Any other machinery or apparatus connected with or operated by any of the previously named boilers, vessels or machines;
- and including the incidental power to make inspections of and to issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise.
- (10) 'Elevator insurance,' meaning insurance against loss of or damage to any property of the insured, resulting from the

ownership, maintenance or use of elevators, except loss or damage by fire.

- (11) 'Animal insurance,' meaning insurance against loss of or damage to any domesticated or wild animal resulting from any cause.
- (12) 'Collision insurance,' meaning insurance against loss of or damage to any property of the insured resulting from collision of any other object with ~~such the~~ property, but not including collision to or by elevators or to or by vessels, craft, piers or other instrumentalities of ocean or inland navigation.
- (13) 'Personal injury liability insurance,' meaning insurance against legal liability of the insured, and against loss, ~~damage damage,~~ or expense incident to a claim of such ~~liability, liability;~~ and including an obligation of the insurer to pay medical, hospital, ~~surgical and surgical,~~ or funeral ~~benefits benefits;~~ and in the case of automobile liability insurance including also disability and death benefits to injured persons, irrespective of legal liability of the insured, arising out of the death or injury of any person, or arising out of injury to the economic interests of any person as a result of negligence in rendering expert, ~~fiduciary~~ fiduciary, or professional ~~service, service;~~ but not including any kind of insurance specified in subdivision (15).
- (14) 'Property damage liability insurance,' meaning insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of such liability, arising out of the loss or destruction of, or damage to, the property of any other person, but not including any kind of insurance specified in subdivision (13) or (15).
- (15) 'Workers' compensation and employer's liability insurance,' meaning insurance against the legal liability, whether imposed by common law or by statute or assumed by contract, of any employer for the death or disablement of, or injury to, ~~his or its~~ the employer's employee.
- (16) 'Fidelity and surety insurance,' meaning:
 - a. Guaranteeing the fidelity of persons holding positions of public or private trust;
 - b. Becoming surety on, or guaranteeing the performance of, any lawful contract except the following:
 - 1. A contract of indebtedness secured by title to, or mortgage upon, or interest in, real or personal property;

2. Any insurance contract except reinsurance;
- c. Becoming surety on, or guaranteeing the performance of, bonds and undertakings required or permitted in all judicial proceedings or otherwise by law allowed, including surety bonds accepted by states and municipal authorities in lieu of deposits as security for the performance of insurance contracts;
 - d. Guaranteeing contracts of indebtedness secured by any title to, or interest in, real property, only to the extent required for the purpose of refunding, extending, refinancing, liquidating or salvaging obligations heretofore lawfully made and guaranteed;
 - e. Indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidences of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while the same are being transported in armored motor vehicles, or by ~~messenger~~, messenger; but not including any other risks of transportation or navigation; also against loss or damage to such an insured's premises, or to ~~his~~ the insured's furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat.
- (17) 'Credit insurance,' meaning indemnifying merchants or other persons extending credit against loss or damage resulting from the nonpayment of debts owed to them; and including the incidental power to acquire and dispose of debts so insured, and to collect any debts owed to ~~such the~~ insurer or to any person so insured by ~~him~~ the insurer including without limiting the foregoing, mortgage guaranty insurance ~~which~~ that is insurance against financial loss by reason of the nonpayment of principal, interest, and other sums agreed to be paid under the terms of any note or bond, or other evidence of indebtedness secured by a security interest, mortgage, deed of trust, or other instrument constituting a lien or charge on real estate, or on such personal property as the Commissioner may from time to time approve.

- (18) 'Title insurance,' meaning insuring the owners of real property and chattels real and other persons lawfully interested therein against loss by reason of defective titles and encumbrances thereon and insuring the correctness of searches for all instruments, liens or charges affecting the title to ~~such~~ that property, including the power to procure and furnish information relative thereto, and ~~such~~ other incidental powers ~~as that~~ are specifically granted in Articles 1 through 64 of this Chapter.
- (19) 'Motor vehicle and aircraft insurance,' meaning insurance against loss of or damage resulting from any cause to motor vehicles or aircraft and their equipment, and against legal liability of the insured for loss or damage to ~~the~~ another's property of another resulting from the ownership, maintenance or use of motor vehicles or aircraft and against loss, damage or expense incident to a claim of such liability.
- (20) 'Marine insurance,' meaning insurance against any and all kinds of loss or damage to:
- a. Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks, and
 - b. Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of ~~such the~~ insurance (but not including life insurance or surety bonds nor insurance against loss ~~by reason~~ because of bodily injury to the

- person arising out of the ownership, maintenance or use of automobiles), and
- c. Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise, and
 - d. Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion are the only hazards to be covered; piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion; other aids to navigation and transportation, including dry docks and marine railways against all risks.
- (21) 'Marine protection and indemnity insurance,' meaning insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.
- (22) 'Miscellaneous insurance,' meaning insurance against any other casualty authorized by the charter of the company, not included in subdivisions (1) to (21) ~~inclusive~~ of this section, which is a proper subject of insurance."

Sec. 8. G.S. 58-58-110(a) reads as rewritten:

"(a) Each insurer admitted to transact insurance in this State which, without the written consent of the beneficiary, fails or refuses to pay the death proceeds or death benefits in accordance with the terms of any policy ~~of life or accident insurance~~ providing a death benefit issued by it in this State within 30 days after receipt of satisfactory proof of loss because of the death, whether accidental or otherwise, of the insured shall pay interest, at a rate not less than the then current rate of interest on death proceeds left on deposit with the insurer computed from the date of the insured's death, on any moneys payable and unpaid after the expiration of ~~such~~ the 30-day period. As used in this subsection, the phrase "satisfactory proof of loss because of the death" includes, but is not limited to, a certified copy of the death certificate; or a written statement by the attending physician at the time of death that contains the following information: (i) the name and

address of the physician, who must be duly licensed to practice medicine in the United States; (ii) the name of the deceased; (iii) the date, time, and place of the death; and (iv) the immediate cause of the death."

Sec. 9. G.S. 58-58-140 reads as rewritten:

"§ 58-58-140. *Group life insurance standard provisions.*

No policy of group life insurance shall be delivered in this State unless it contains in substance the following provisions, or provisions which in the ~~Commissioner's opinion of the Commissioner~~ are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder, provided, however, (i) that subdivisions (6) ~~to through~~ (10) ~~inclusive shall~~ of this section do not apply to policies issued to a creditor to insure the creditor's debtors; creditors of such creditor; (ii) that the standard provisions required for individual life insurance policies ~~shall do not~~ apply to group life insurance policies; and (iii) that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions ~~which that~~ in the ~~Commissioner's opinion of the Commissioner~~ is or are equitable to the insured persons and to the policyholder, but nothing ~~herein shall be construed to require that in this section requires~~ group life insurance policies to contain the same nonforfeiture provisions as ~~that~~ are required for individual life insurance policies:

- (1) A provision that the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder ~~shall have~~ has given the insurer written notice of discontinuance ~~in advance of~~ before the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during ~~such~~ the grace period.
- (2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to ~~his~~ that person's insurability shall be used in contesting the validity of the insurance with respect to which ~~such~~ the statement was made after ~~such~~ the insurance has been in force ~~prior to~~ before the contest for a period of two years during ~~such~~ the person's lifetime nor

unless it is contained in a written instrument signed by ~~him,~~ the person.

- (3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be ~~deemed~~ considered representations and not ~~warranties,~~ warranties; and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to ~~such~~ the person or to ~~his~~ the person's beneficiary.
- (4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of ~~his~~ the person's coverage.
- (5) A provision specifying an equitable adjustment of premiums or ~~of benefits~~ benefits, or ~~of both~~ both, to be made ~~in the event~~ if the age of a person insured has been ~~misstated,~~ such misstated; the provision to contain a clear statement of the method of adjustment to be used.
- (6) A provision that any sum becoming due ~~by reason~~ because of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy ~~in the event~~ if there is no designated beneficiary as to all or any part of ~~such~~ the sum living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of ~~such~~ the sum not exceeding two hundred fifty dollars (\$250.00) to any person appearing to the insurer to be equitably entitled thereto by ~~reason of~~ having incurred funeral or other expenses incident to the last illness or death of the person insured.
- (7) A provision that the insurer will issue to the ~~policyholder~~ policyholder, for delivery to each person ~~insured~~ insured, an individual certificate setting forth a statement as to the insurance protection to which ~~he~~ the person is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in subdivisions (8), (9) and (10) ~~following,~~ of this section.
- (8) A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the ~~class~~ or classes eligible for coverage under the policy, ~~such~~ the

person shall be entitled to ~~have be issued to him~~ by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within 31 days after such termination, and provided further that,

- a. The individual policy shall, at the option of ~~such the~~ person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;
 - b. The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of ~~such the~~ termination, provided that any amount of insurance which shall have matured on or before the date of ~~such the~~ termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of ~~such the~~ termination; and
 - c. The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which ~~such the~~ person then belongs, and to ~~his the~~ person's age ~~attained~~ on the effective date of the individual policy.
- (9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured ~~thereunder under~~ the policy at the date of ~~such the~~ termination whose insurance terminates and who has been so insured for at least five years ~~prior to such~~ before the termination date shall be entitled to ~~have issued to him~~ be issued by the insurer an individual policy of life insurance, subject to the ~~same~~ conditions and limitations ~~as are provided by in~~ (8) above, except that the group policy may provide that the amount of ~~such the~~ individual policy shall not exceed the smaller of (i) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which ~~he the person~~ is or becomes eligible under any group policy issued or reinstated by the same or another

insurer within 31 days after ~~such~~ termination, and (ii) ~~two thousand dollars (\$2,000),~~ ten thousand dollars (\$10,000).

- (10) A provision that if a person insured under the group policy dies during the period within which ~~he~~ the person would have been entitled to have ~~been issued an individual policy issued to him~~ in accordance with (8) or (9) above and before such an individual policy shall have become effective, the amount of life insurance which ~~he~~ the person would have been entitled to have ~~been issued to him~~ under ~~such~~ the individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made."

Sec. 10. G.S. 58-60-35(a)(2) reads as rewritten:

- "(2) 'Prearrangement insurance policy' means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued on a group or individual basis by an insurance company authorized by law to do business in this State, which, whether by assignment or otherwise, has for a purpose the funding of a specific preneed funeral contract or a specific insurance-funded funeral or burial prearrangement, the insured being the person for whose service the funds were paid."

Sec. 11. G.S. 58-51-80(g) reads as rewritten:

"(g) Any policy or contract of group accident, group health or group accident and health insurance may provide for readjustment of the rate of premium based on the experience thereunder at the end of the first year, or at any time during any subsequent year based upon at least 12 months of experience: Provided that any such readjustment after the first year shall not be made any more frequently than once every six months. Any rate adjustment must be preceded by a 45-day notice to the contract holder before the effective date of any rate increase or any policy benefit revision. A notice of nonrenewal shall be given to the contract holder 45 days prior to termination. Any refund under any plan for readjustment of the rate of premium based on the experience under group policies and any dividend paid under ~~such~~ the policies may be used to reduce the employer's or principal's contribution to group insurance for the employees of the employer, or the agents of the principal, and the excess over ~~such~~ the contribution by the employer, or principal, shall be applied by the employer, or principal, for the sole benefit of the employees or agents."

Sec. 12. G.S. 58-51-30 reads as rewritten:

"§ 58-51-30. Policies to cover newborn ~~infants~~, infants and adopted children.

Every policy of insurance and every hospital service or medical service plan as defined in Articles 65 and 66 of this ~~Chapter~~ Chapter, and any health care plan operated by a health maintenance organization as defined in Article 67 of this Chapter (regardless of whether any of such policies or plans shall be defined as individual, family, group, blanket, franchise, industrial or otherwise) ~~which that~~ provides benefits on account of any sickness, illness, or disability of any minor child or ~~which that~~ provides benefits on account of any medical treatment or service authorized or permitted to be furnished by a hospital under the laws of this State to any minor child shall provide ~~such the~~ benefits for ~~such those~~ occurrences beginning with the moment of the child's birth ~~of such child~~ if ~~such the~~ birth occurs while ~~said policy or the policy~~, subscriber ~~contract~~ contract, or evidence of coverage with such a plan is in force. Adoptive children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the adoptive home, regardless of whether a final decree of adoption has been entered; provided that a petition for adoption has been duly filed and is pursued to a final degree of adoption.

Benefits in such insurance ~~policies or plans~~ policies, plans, or evidence of coverage shall be the same for congenital defects or anomalies as are provided for most sicknesses or illnesses suffered by minor children which are covered by ~~said policies or the policies, plans, plans, or evidence of coverage~~. Benefits for congenital defects or anomalies shall specifically include, but not be limited to, all necessary treatment and care needed by individuals born with cleft lip or cleft palate.

No policy or plan subscriber contract or evidence of coverage shall be approved by the Commissioner of Insurance pursuant to the provisions of this Article or the provisions of Articles ~~65 and 66~~ 65, 66, and 67 of this Chapter that does not comply with the provisions of this section.

The provisions of this section shall apply both to insurers governed by the provisions of Articles 1 through 64 of this Chapter and to corporations governed by the provisions of Articles ~~65 and 66~~ 65, 66, and 67 of this Chapter."

Sec. 13. G.S. 58-67-50(c) reads as rewritten:

"(c) The Commissioner shall, within a reasonable period, approve any form if the requirements of paragraph (1) are met and any schedule of premiums if the requirements of paragraph (2) are met. It shall be unlawful to issue ~~such the~~ form or to use ~~such the~~ schedule of premiums until approved. If the Commissioner disapproves ~~such the~~

filing, ~~he~~ the Commissioner shall notify the filer. In the notice, the Commissioner shall specify the reasons for ~~his~~ disapproval. A hearing will be granted within 30 days after a request in writing by the person filing. If the Commissioner does not approve or disapprove any form or schedule of premiums within ~~30~~ 90 days ~~of after~~ the filing for forms and within 60 days after the filing for premiums, ~~of such forms or premiums,~~ they shall be deemed to be approved."

Sec. 14. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-102. Request for determination of coverage for transplants under health benefit payment mechanisms; required response time; penalties.

(a) As used in this section, 'insurer' means any payer of health benefits that is subject to Articles 1 through 66 of this Chapter.

(b) When a person or that person's health care provider or representative requests that person's insurer to determine whether a transplant is eligible for benefits under that person's health benefit coverage, the insurer shall, within 10 business days after receipt of the request and medical documentation necessary to determine if there is coverage, inform the requesting person as to whether there is coverage; provided coverage exists at the time of the transplant."

Sec. 15. G.S. 58-69-5 reads as rewritten:

"§ 58-69-5. License required.

No motor club, district or branch office of a motor club, or franchise motor club shall engage in business in this State unless it holds a valid license issued to it by the Commissioner as ~~hereinafter provided,~~ provided in this Article. The license shall at all times be prominently displayed in each office of the entity to which the license is issued."

Sec. 16. G.S. 58-33-25(e) reads as rewritten:

"(e) A limited representative may receive qualification for one or more licenses without examination for the following kinds of insurance:

- (1),(2) Repealed by Session Laws 1989, c. 485, s. 19.
- (3) Credit Life, Accident and Health
- (4) Credit
- (5) Travel Accident and Baggage
- (6) Motor Club
- (7) Dental ~~Service,~~ Services
- (8) Bail bonds executed or countersigned by surety bondsmen under Article 71 of this Chapter."

Sec. 17. G.S. 58-71-80 reads as rewritten:

"§ 58-71-80. Grounds for denial, suspension, revocation or refusal to renew licenses.

(a) The Commissioner may deny, suspend, or revoke or refuse to renew any license issued under this Article for any of the following causes:

- (1) For any cause sufficient to deny, suspend, or revoke license under any other provision of this Article.
- (2) Violation of any laws of this State relating to bail in the course of dealings under the license issued ~~him~~ by the Commissioner.
- (3) Material misstatement, misrepresentation or fraud in obtaining the license.
- (4) Misappropriation, conversion or unlawful withholding of moneys belonging to insurers or others and received in the conduct of business under the license.
- (5) Fraudulent or dishonest practices in the conduct of business under the license.
- (6) Conviction of a felony regardless of the time ~~such the~~ conviction occurred and regardless of whether ~~such the~~ conviction resulted from conduct in or related to the bail bond business.
- (7) Failure to comply with or violation of the provisions of this Article or of any order, rule or regulation of the Commissioner.
- (8) When in the judgment of the Commissioner, the licensee has in the conduct of ~~his~~ the licensee's affairs under the license, demonstrated incompetency ~~incompetency~~, financial irresponsibility, or untrustworthiness ~~untrustworthiness~~; or that ~~he~~ the licensee is no longer in good faith carrying on the bail bond business ~~business~~; or that ~~he~~ the licensee is guilty of rebating, or offering to rebate, or offering to divide the premiums received for the bond.
- (9) For failing to pay any judgment or decree rendered on any forfeited undertaking in any court of competent jurisdiction.
- (10) For charging or receiving, as premium or compensation for the making of any deposit or bail bond, any sum in excess of that permitted by this Article.
- (11) For requiring, as a condition of ~~his~~ executing a bail bond, that the principal agree to engage the services of a specified attorney.
- (12) For cheating on an examination for a license under this Article.
- (13) For entering into any business association or agreement with any ~~person, which person~~ person who is at that time found by the Commissioner to be in violation of any of the bail bond laws of this State, or ~~which person~~ who has been

in any manner disqualified under the bail bond laws of any other state, whereby ~~such~~ the person has any direct or indirect financial interest in the bail bond business of the licensee or applicant.

(14) For knowingly aiding or abetting others to evade or violate the provisions of this Article.

(15) Any cause for which issuance of the license could not have been refused had it then existed and been known to the Commissioner at the time of issuance.

(b) The Commissioner, in lieu of revoking or suspending a license in accordance with the provisions of this Article, may, in any one proceeding, by order, require the licensee to pay to the school fund in the licensee's county of ~~his~~ residence a civil penalty ~~in the sum~~ of two hundred fifty dollars (\$250.00) for each offense. Upon the licensee's failure of ~~such licensee~~ to pay the penalty within 20 days after the ~~mailing of such order~~, order is mailed, postage prepaid, registered and addressed to the licensee's last known place of ~~business of such licensee, business,~~ business, unless such the order is stayed by an order of the court of competent ~~jurisdiction, jurisdiction or unless the~~ Commissioner has already suspended or revoked the license of the licensee, the Commissioner may revoke the license of ~~such licensee~~ or may suspend the same license for ~~such a period as he may determine,~~ any period."

Sec. 18. G.S. 58-71-105 reads as rewritten:

" § 58-71-105. *Persons prohibited from becoming surety or runners.*

No sheriff, deputy sheriff, other law-enforcement officer, judicial official, attorney, parole officer, probation officer, jailer, assistant jailer, employee of the General Court of Justice, nor other public employee assigned to duties relating to the administration of criminal justice, nor the spouse of any such person, may in any case become surety on a bail bond for any person. In addition, no person covered by this section may act as an agent for any bonding company or professional bondsman. No such person may have an interest, directly or indirectly, in the financial affairs of any firm or corporation whose principal business is acting as ~~bondsmen, a bail bondsman.~~ Provided, ~~however,~~ However, nothing ~~herein shall prohibit in this section~~ prohibits any such person ~~above designated~~ from being surety upon the bond of his or her spouse, parent, brother, sister, ~~child~~ child, or descendant."

Sec. 19. G.S. 58-71-185 reads as rewritten:

" § 58-71-185. *Penalties for violations.*

Any person, firm, association or corporation violating any of the provisions of this Article is guilty of a misdemeanor and shall upon conviction for each offense be fined not ~~more than five hundred~~

dollars (\$500.00) less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or imprisoned for not more than six months, two years, or both."

Sec. 20. G.S. 58-71-165 reads as rewritten:

" § 58-71-165. Monthly report required.

Each professional bail bondsman and surety bondsman shall file with the Commissioner of Insurance a written report in form prescribed by the Commissioner regarding all bail bonds on which ~~he~~ the bondsman is liable as of the first day of each month showing (i) each individual bonded, (ii) the date ~~such~~ the bond was given, (iii) the principal sum of the bond, (iv) the State or local official to whom given, and (v) the fee charged for the bonding service in each instance. ~~Such~~ The report shall be filed on or before the fifteenth day of each month. Within the same time, a copy of this written report must also be filed with the clerk of superior court in any county in which ~~he~~ the bondsman is obligated on bail bonds. Any person who knowingly and willfully falsifies a report required by this section is guilty of a Class J felony."

Sec. 21. G.S. 58-71-170 reads as rewritten:

" § 58-71-170. Examinations.

(a) Whenever the Commissioner deems it ~~prudent~~ he prudent, the Commissioner shall visit and examine or cause to be visited and examined by ~~some~~ a competent person appointed by ~~him~~ the Commissioner for that purpose any professional bail bondsman subject to the provisions of this Article. For this purpose the Commissioner or person making the examination shall have free access to all books and papers of the bondsman that relate to ~~his~~ the bondsman's business and to the books and papers kept by any of ~~his~~ the bondsman's agents or runners.

(b) The Commissioner may conduct examinations of surety bondsmen under G.S. 58-2-195 as well as under subsection (a) of this section."

Sec. 22. Article 71 of Chapter 58 of the General Statutes is amended by adding two new subsections to read:

" § 58-71-167. Portion of bond premium payments deferred.

(a) In any case where the agreement between principal and surety calls for some portion of the bond premium payments to be deferred or paid after the defendant has been released from custody, a written memorandum of agreement between the principal and surety shall be kept on file by the surety with a copy provided to the principal, upon request. The memorandum shall contain the following information:

(1) The amount of the premium payment deferred or not yet paid at the time the defendant is released from jail.

(2) The method and schedule of payment to be made by the defendant to the bondsman, which shall include the dates of payment and amount to be paid on each date.

(3) That the principal is, upon the principal's request, entitled to a copy of the memorandum.

(b) The memorandum must be signed by the defendant and the bondsman, or one of the bondsman's agents, and dated at the time the agreement is made. Any subsequent modifications of the memorandum must be in writing, signed, dated, and kept on file by the surety, with a copy provided to the principal, upon request.

" § 58-71-168. Records to be maintained.

All records related to executing bail bonds, including bail bond registers, monthly reports, receipts, collateral security agreements, and memoranda of agreements, shall be kept separate from records of any other business and must be maintained for not less than three years after the final entry has been made."

Sec. 23. G.S. 58-70-65 is amended by adding a new subsection to read:

"(c) Each permit holder located outside this State shall deposit in a separate trust account, designated for its North Carolina creditors, funds to pay all monies due or owing all collection creditors or forwarders located within this State."

Sec. 24. Article 55 of Chapter 58 of the General Statutes is amended by adding a new section to read:

" § 58-55-5. Dual options.

(a) No policy that conditions the eligibility of benefits on prior hospitalization may be delivered or issued for delivery in this State unless the insurer or other entity offering that policy also offers a policy that does not condition eligibility of benefits on such a requirement.

(b) Policies that were delivered, issued for delivery, or renewed on and after October 1, 1989, that did not condition the eligibility of benefits on prior hospitalizations shall be amended, upon the insured's written request, to condition eligibility of benefits on prior hospitalization, provided that the insured receives the appropriate reduction in premium."

Sec. 25. Article 4 of Chapter 97 of the General Statutes is amended by adding a new section to read:

" § 97-143. Use of deposits made by insolvent member self-insurers.

After the Commissioner has notified the Association, under G.S. 97-136(a), that a member is insolvent, the Commissioner shall assign and deliver to the Association, and the Association is authorized to expend the deposit made by the insolvent member pursuant to G.S. 97-93(b), to the extent the deposit is needed by the Association to pay

covered claims against the premium taxes owed by the insolvent member as required by this Article, and to the extent the deposit is needed to pay expenses of the Association relating to covered claims against the insolvent member. The Association shall account to the Commissioner and the insolvent member or its successor for all deposits received from the Commissioner under this section."

Sec. 26. G.S. 58-2-40 reads as rewritten:

" § 58-2-40. *Powers and duties of Commissioner.*

The Commissioner shall:

- (1) See that all laws of this State that ~~he~~ the Commissioner is ~~statutorily~~ responsible for administering and the provisions of this Chapter are faithfully executed; and to that end ~~he shall have power and authority to make~~ the Commissioner is authorized to adopt rules in accordance with Chapter 150B of the General Statutes, in order to enforce, carry out and make effective the provisions of those laws. ~~He~~ The Commissioner is also ~~has the authority~~ authorized to ~~make~~ adopt such further rules not contrary to those laws ~~which~~ that will prevent persons subject to ~~his~~ the Commissioner's regulatory authority from engaging in practices injurious to the public.
- (2) Have the power and authority to ~~make and promulgate~~ adopt rules ~~and regulations~~ pertaining to and governing the solicitation of proxies, including financial reporting in connection therewith, with respect to the capital stock or other equity securities of any domestic stock insurance company.
- (3) ~~Furnish~~ Prescribe to the companies, associations, ~~orders~~ orders, or bureaus required by Articles 1 through 64 of this Chapter to report to ~~him~~, the Commissioner, the necessary ~~blank forms for the statements required, which forms may be changed by him~~ required. The Commissioner may change those forms from time to time when necessary to secure full information as to the standing, ~~condition~~ condition, and such other information desired of companies, associations, ~~orders~~ orders, or bureaus under the ~~Insurance~~ jurisdiction of the Department.
- (4) Receive and thoroughly examine each ~~annual~~ financial statement required by Articles 1 through 64 of this Chapter.
- (5) Report in detail to the Attorney General any violations of the laws relative to insurance companies, associations, orders and bureaus or the business of ~~insurance~~, insurance; and ~~he~~ the Commissioner ~~shall have power to~~ may institute civil actions or criminal prosecutions either by the Attorney

General or ~~such other~~ another attorney as whom the Attorney General may select, for any violation of the provisions of Articles 1 through 64 of this Chapter.

- (6) Upon a proper application by any citizen of this State, give a statement or synopsis of the provisions of any insurance contract offered or issued to ~~such~~ the citizen.
- (7) ~~Administer by himself~~ Administer, or ~~by his~~ the Commissioner's deputy may administer, all oaths required in the discharge of ~~his~~ the Commissioner's official duty.
- (8) Compile and make available to the public such lists of rates charged, including deviations, and such explanations of coverages that are provided by insurers for and in connection with contracts or policies of (i) insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance and (ii) private passenger (nonfleet) motor vehicle liability, physical damage, theft, medical payments, uninsured motorists, and other insurance coverages written in connection with the sale of such insurance, as may be advisable to inform the public of insurance premium differentials and of the nature and types of coverages provided. The explanations of coverages provided for in this section must comply with the provisions of Article 38 of this Chapter."

Sec. 27. G.S. 58-51-20(a) reads as rewritten:

"(a) Every individual or blanket family hospitalization policy and accident and health policy, other than ~~noncancellable~~ noncancelable or nonrenewable policies but including group, blanket and franchise policies, as defined in Articles 1 through 64 of this Chapter, covering less than 10 persons, issued in North Carolina after January 1, 1956, shall include in substance the following provision:

Renewability: This policy is renewable at the option of the policyholder unless sufficient notice of nonrenewal is given the policyholder in writing by the insurer.

Sufficient notice shall be, during the first year of any policy, or during the first year following any lapse and reinstatement, a period of 30 days ~~prior to~~ before the premium due date. After one continuous year of coverage and acceptance of premium for any portion of the second or subsequent year sufficient notice shall be a number of full months most nearly equivalent to one fourth the number of months of continuous coverage from the ~~first anniversary of the date of issue or reinstatement~~, inception date of the policy, to the date of mailing of

such the notice: Provided no period of required notice shall exceed two years."

Sec. 28. Article 63 of Chapter 58 of the General Statutes is amended by adding a new section to read:

" § 58-63-32. Cease and desist order.

(a) If, after a hearing under G.S. 58-63-25, the Commissioner determines that the method of competition or the act or practice in question is defined in G.S. 58-63-15 and that the person complained of has engaged in the method of competition, act, or practice in violation of this Article, the Commissioner shall reduce his finding to writing and shall issue and cause to be served upon the person charged with the violation an order requiring the person to cease and desist from engaging in the method, act, or practice.

(b) Until the expiration of the time allowed under G.S. 58-63-35(a) for filing a petition for review, if no such petition has been duly filed within that time, then until the transcript of the record in the proceeding has been filed in court, the Commissioner may at any time, upon such notice and in such manner as the Commissioner considers proper, modify or set aside in whole or in part any order issued by the Commissioner under this section.

(c) After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within that time, the Commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by the Commissioner under this section, whenever in the Commissioner's opinion conditions of fact or of law have so changed as to require the action or if the public interest requires."

Sec. 29. G.S. 58-63-30 is repealed.

Sec. 30. Article 62 of Chapter 58 of the General Statutes is amended by adding a new section to read:

" § 58-62-92. Procedure for appeal to Commissioner from decision of Association.

In any hearing called by the Commissioner for an appeal made under G.S. 58-62-90(b), no later than 20 days before the hearing the appellant shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellee a written statement of the appellant's case and any evidence the appellant intends to offer at the hearing. No later than five days before the hearing, the appellee shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellant a written statement of the appellee's case and any evidence the appellee intends to offer at the hearing. Each hearing shall be recorded and transcribed. The cost of recording and transcribing shall be borne equally by the appellant and the appellee; however, upon any final

adjudication the prevailing party shall be reimbursed for that party's share of the costs by the other party. Each party shall, on a date determined by the Commissioner or the Commissioner's designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or the Commissioner's designated hearing officer and serve on the other party, a proposed order. The Commissioner or the Commissioner's designated hearing officer shall then issue an order."

Sec. 31. Article 48 of Chapter 58 of the General Statutes is amended by adding a new section to read:

" § 58-48-42. Procedure for appeal to Commissioner from decision of Association.

In any hearing called by the Commissioner for an appeal made pursuant to G.S. 58-48-40(7), no later than 20 days before the hearing the appellant shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellee a written statement of the appellant's case and any evidence the appellant intends to offer at the hearing. No later than five days before the hearing, the appellee shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellant a written statement of the appellee's case and any evidence the appellee intends to offer at the hearing. Each hearing shall be recorded and transcribed. The cost of the recording and transcribing shall be borne equally by the appellant and the appellee. However, upon any final adjudication the prevailing party shall be reimbursed for that party's share of the costs by the other party. Each party shall, on a date determined by the Commissioner or the Commissioner's designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or the Commissioner's designated hearing officer and serve on the other party, a proposed order. The Commissioner or the Commissioner's designated hearing officer shall then issue an order."

Sec. 32. G.S. 58-7-75 reads as rewritten:

" § 58-7-75. Amount of capital and/or surplus required; impairment of capital or surplus.

The amount of capital and/or surplus requisite to the formation and organization of companies under the provisions of Articles 1 through 64 of this Chapter shall be as follows:

(1) Stock Life Insurance Companies.

- ~~a.~~ A stock corporation may be organized in the manner prescribed in ~~Articles 1 through 64~~ of this Chapter and licensed to do the business of life insurance, only when it ~~shall have~~ has paid-in capital of at least six hundred thousand dollars (\$600,000) and a paid-in initial

surplus of at least nine hundred thousand dollars (\$900,000), and it may in addition do the kind of business specified in ~~subdivision (2) of G.S. 58-7-15(2), (annuities)~~, without having additional capital or surplus. Every such company shall at all times thereafter maintain a minimum capital of not less than six hundred thousand dollars (\$600,000) and a minimum surplus of at least one hundred fifty thousand dollars (\$150,000). Provided that, any such corporation may do either or both of the kinds of insurance authorized for stock, accident and health insurance companies, as set out in paragraphs a and b of subdivision (3) of G.S. 58-7-15 (accidental death or personal injury, and noncancelable disability), where its charter so permits, and when and so long as it meets and maintains a minimum capital and surplus equal to the sum of the minimum capital and surplus requirements of this subdivision (1)a and the minimum capital and surplus requirements of subdivision (2)a and/or (2)b hereof as applicable.

~~b. If the Commissioner, after such investigation as he may deem it expedient to make, finds that a corporation may be organized to do the business of life insurance, or the writing of annuities or both, that its operations are restricted solely to one state, and that the organization of such corporation is in the public interest, he may permit the organization of a stock corporation to do on such restricted plan either or both kinds of business specified in subdivisions (1) and (2) of G.S. 58-7-15 (life insurance and annuities), with the minimum paid-in capital and a minimum paid-in initial surplus in an amount to be prescribed by him, but in no event to be less than a paid-in capital of four hundred thousand dollars (\$400,000) and a paid-in surplus of six hundred thousand dollars (\$600,000). Every such company shall at all times thereafter maintain such prescribed minimum capital, or four hundred thousand dollars (\$400,000), whichever is greater and a minimum surplus of at least one hundred thousand dollars (\$100,000).~~

(2) Stock Accident and Health Insurance Companies.

a. A stock corporation may be organized in the manner prescribed in Articles 1 through 64 of this Chapter and licensed to do only the kind of insurance specified in

- ~~subdivision (3)a of G.S. 58-7-15(3)a, (accidental death or personal injury), when it shall have a~~ has paid-in capital of not less than four hundred thousand dollars (\$400,000), and a paid-in initial surplus of at least six hundred thousand dollars (\$600,000). Every such company shall at all times thereafter maintain a minimum capital of not less than four hundred thousand dollars (\$400,000) and a minimum surplus of at least one hundred thousand dollars (\$100,000).
- b. Any company organized under the provisions of paragraph a of this subdivision may, by the provisions of its original charter or any amendment thereto, acquire the power to do the kind of business specified in ~~paragraph b of subdivision (3) of G.S. 58-7-15(3)b, (noncancelable disability insurance),~~ if it has a paid-in capital of at least six hundred thousand dollars (\$600,000) and a paid-in initial surplus of at least nine hundred thousand dollars (\$900,000). Every such company shall at all times maintain a minimum capital of not less than six hundred thousand dollars (\$600,000) and a minimum surplus of at least one hundred fifty thousand dollars (\$150,000).
- (3) Stock Fire and Marine Companies. -- A stock corporation may be organized in the manner prescribed in ~~Articles 1 through 64 of this Chapter and licensed to do one or more of the kinds of insurance specified in subdivisions G.S. 58-7-15 (4), (5), (6), (7), (8), (11), (12), (19), (20), (21) and (22) of G.S. 58-7-15~~ only when it ~~shall have~~ has a paid-in capital of not less than eight hundred thousand dollars (\$800,000) and a paid-in initial surplus of not less than one million two hundred thousand dollars (\$1,200,000). Every such company shall at all times thereafter maintain a minimum capital of not less than eight hundred thousand dollars (\$800,000) and a minimum surplus of at least two hundred thousand dollars (\$200,000). Provided that, any such corporation may do all the kinds of insurance authorized for casualty, fidelity and surety companies, as set out in subdivision (4) ~~hereof~~ of this section where its charter so permits, and when and so long as it meets and thereafter maintains a minimum capital and surplus equal to the sum of the minimum capital and surplus requirements of this subdivision ~~(3)~~ and the minimum capital and surplus requirements of subdivision (4) ~~hereof, of this section.~~

- (4) Stock Casualty and Fidelity and Surety Companies.
- a. A stock corporation may be organized in the manner prescribed in ~~Articles 1 through 64~~ of this Chapter and licensed to do one or more of the kinds of insurance specified in ~~subdivisions~~ G.S. 58-7-15 (3), (6), (7), (8), (9), (10), (11), (12), ~~(13), (14), (15), (16), (17), (18), (19), (21) and (22) of G.S. 58-7-15~~ only when it ~~shall have~~ has a paid-in capital of not less than one million dollars (\$1,000,000) and a paid-in initial surplus of not less than one million five hundred thousand dollars (\$1,500,000). Every such company shall at all times thereafter maintain a minimum capital of not less than one million dollars (\$1,000,000) and a minimum surplus of at least two hundred fifty thousand dollars (\$250,000).
 - b. ~~If the Commissioner, after such investigation as he may deem it expedient to make, finds that a corporation may be organized to do one or more of such kinds of insurance, that its operations are restricted solely to one state, and that the organization of such corporation is in the public interest, he may permit such corporation to be organized and licensed to write the lines set out in subsection a above with a paid-in capital of not less than six hundred thousand dollars (\$600,000) and a paid-in initial surplus of not less than nine hundred thousand dollars (\$900,000). Every such company shall hereafter maintain a minimum capital of not less than six hundred thousand dollars (\$600,000) and a minimum surplus of at least one hundred fifty thousand dollars (\$150,000). Provided that, any such casualty, fidelity and surety corporation may do all the kinds of insurance authorized for fire and marine companies, as set out in subdivision (3) hereof where its charter so permits, when and if it meets all additional requirements as to capital and surplus as fixed in said section, and maintains the same.~~
- (5) Mutual Fire and Marine Companies.
- a. Limited assessment companies. -- A limited assessment mutual company may be organized in the manner prescribed in ~~Articles 1 through 64~~ of this Chapter and licensed to do one or more kinds of insurance specified in ~~subdivisions~~ G.S. 58-7-15 (4), (5), (6), (7), (8), (11), (12), (19), (20), (21) and (22) of G.S. 58-7-15 only when it has no less than five hundred thousand

dollars (\$500,000) of insurance in not fewer than 500 separate risks subscribed with a paid-in initial surplus of at least three hundred thousand dollars (\$300,000), which surplus shall at all times be maintained. The assessment liability of a policyholder of a company organized in accordance with the provisions of this ~~paragraph~~ sub-subdivision shall not be limited to less than five annual ~~premiums~~ premiums; provided, ~~such the~~ the limited assessment company may reduce the assessment liability of its policyholders from ~~such~~ such five annual premiums ~~as set out herein~~ to one additional annual premium when the free surplus of ~~such the~~ the company amounts to not less than three hundred thousand dollars (\$300,000), which surplus shall at all times be maintained.

- b. Assessable mutual companies. -- An assessable mutual company may be organized in the manner prescribed in ~~Articles 1 through 64~~ of this Chapter and licensed to do one or more of the kinds of insurance specified in ~~subdivisions G.S. 58-7-15 (4), (5) and (6) (6), of G.S. 58-7-15 (fire, miscellaneous property and water damage),~~ with an unlimited assessment liability of its policyholders only when it ~~shall have~~ has not less than five hundred thousand dollars (\$500,000) of insurance in not fewer than 500 separate risks subscribed with a paid-in initial surplus equal to twice the amount of the maximum net retained liability under the largest policy of insurance issued by ~~such the~~ the company; but not less than sixty thousand dollars ~~(\$60,000)~~ (\$60,000); which surplus shall at all times be maintained. ~~Provided such the~~ the company, when its charter so permits, in addition may be licensed to do one or more of the kinds of insurance specified in ~~subdivisions G.S. 58-7-15 (7), (8), (11), (12), (19), (20), (21) and (22) (22), of G.S. 58-7-15,~~ with an unlimited assessment liability of its policyholders, when its free surplus amounts to not less than sixty thousand dollars (\$60,000), which surplus shall at all times be maintained.
- c. Nonassessable mutual companies. -- A nonassessable mutual company may be organized in the manner prescribed in ~~Articles 1 through 64~~ of this Chapter and licensed to do one or more of the kinds of insurance specified in ~~subdivisions G.S. 58-7-15 (4), (5), (6), (7), (8), (11), (12), (19), (20), (21) and (22) of G.S.~~

~~58-7-15~~ and may be authorized to issue policies under the terms of which a policyholder is not liable for any assessments in addition to the premium set out in the policy only when it ~~shall have~~ has not less than five hundred thousand dollars (\$500,000) of insurance in not fewer than 500 separate risks subscribed with a paid-in initial surplus of not less than eight hundred thousand dollars (\$800,000), which surplus shall at all times be maintained.

- d. Town or county mutual insurance companies. -- A town or county mutual insurance company with unlimited assessment liability may be organized in the manner prescribed in ~~Articles 1 through 64 of this Chapter and~~ licensed to do the kinds of insurance specified in ~~subdivision (4) of G.S. 58-7-15 (fire)~~ G.S. 58-7-15(4) only when it ~~shall have~~ has not less than fifty thousand dollars (\$50,000) of insurance in force in not fewer than 50 separate risks subscribed with a paid-in initial surplus of not less than fifteen thousand dollars (\$15,000), which surplus shall at all times be maintained. A town or county mutual insurance company may, in addition to writing the business specified in ~~subdivision (4) of G.S. 58-7-15 (fire insurance),~~ G.S. 58-7-15(4) cover in the same policy the hazards usually insured against under an extended coverage endorsement when ~~such~~ the company has not less than five hundred thousand dollars (\$500,000) of insurance in force in not fewer than 500 separate risks and maintains a surplus at all times of not less than one hundred twenty thousand dollars (\$120,000); ~~and at all times maintains in addition to the surplus hereinbefore required, an additional surplus of not less than twenty-five thousand dollars (\$25,000) or not less than an amount equivalent to one percent (1%) of the total amount of net retained insurance in force, whichever is the larger sum;~~ Provided, that ~~such~~ the company may not operate in more than six adjacent counties in this State. Any company authorized under this section before July 1, 1991, shall be permitted to continue to do the same kinds of business that it was authorized to do prior to July 1, 1991, without being required to increase its surplus; however, the insurer shall increase its surplus to the required amounts on or before July 1, 1992. The requirements of this sub-subdivision as to

surplus shall apply to such companies as a prerequisite to writing additional lines of business, and to such companies as a prerequisite to commencing business if unlicensed prior to July 1, 1991.

- (6) Mutual Life, Accident and Health Insurance Companies. -- A nonassessable mutual insurance company may be organized in the manner prescribed in ~~Articles 1 through 64 of this Chapter~~, and licensed to do only one or more of the kinds of insurance specified in ~~subdivisions G.S. 58-7-15 (1), (2) and (3) of G.S. 58-7-15 (life, annuities, and accident and health)~~ when it has complied with the requirements of ~~Articles 1 through 64 of this Chapter~~ and with those ~~hereinafter~~ set forth in ~~paragraphs subdivisions a to through d of this subdivision, inclusive,~~ subdivisions a to through d of this subdivision, inclusive, whichever shall be applicable.
- a. If organized to do only the kinds of insurance specified in ~~subdivisions G.S. 58-7-15 (1) and (2) of G.S. 58-7-15 (life insurance and annuities),~~ such the company shall have not less than 500 bona fide applications for life insurance in an aggregate amount not less than five hundred thousand dollars (\$500,000), and shall have received from each such applicant in cash the full amount of one annual premium on the policy for which the applicant applied, ~~applied for by him,~~ in an aggregate amount at least equal to ten thousand dollars (\$10,000), and shall in addition have a paid-in initial surplus of two hundred thousand dollars (\$200,000), and shall have and maintain at all times a minimum surplus of one hundred thousand dollars (\$100,000).
- b. If organized to do only the kind of insurance specified in paragraph a of ~~subdivision G.S. 58-7-15 (3) of G.S. 58-7-15 (accidental death and personal injury),~~ such the company shall have not less than 250 bona fide applications for ~~such that~~ insurance, and shall have received from each ~~such~~ applicant in cash the full amount of one annual premium on the policy for which the applicant applied, ~~applied for by him~~ in an aggregate amount of at least ten thousand dollars (\$10,000), and shall have a paid-in initial surplus of two hundred thousand dollars (\$200,000) and shall have and maintain at all times a minimum surplus of one hundred thousand dollars (\$100,000).

- c. If organized to do the kinds of insurance specified in ~~subdivision G.S. 58-7-15 (1) and (3)a, in paragraph a of subdivision (3) of G.S. 58-7-15 (life insurance and accidental death and injury),~~ such the company shall have complied with the provisions of ~~both paragraphs sub-subdivisions a and b hereof, of this subdivision.~~
 - d. If organized to do the kind of insurance specified in ~~paragraph b of subdivision (3) of G.S. 58-7-15(3)b (noncancelable disability insurance),~~ in addition to the kind or kinds of insurance designated in any one of the ~~foregoing paragraphs preceding sub-subdivisions~~ of this subdivision, ~~such~~ the company shall have a paid-in initial surplus of at least five hundred thousand dollars (\$500,000) and shall maintain a minimum surplus of at least three hundred thousand dollars (\$300,000).
- (7) Organization of Mutual Casualty, Fidelity and Surety Companies.
- a. Nonassessable, mutual companies. -- A mutual insurance company with no assessment liability provided for its policyholders may be organized in the manner prescribed in ~~Articles 1 through 64 of this Chapter~~ and licensed to do one or more of the kinds of insurance specified in ~~subdivisions G.S. 58-7-15 (3), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (21) and (22) of G.S. 58-7-15~~ when it has a minimum paid-in initial surplus of one million dollars (\$1,000,000) and not less than five hundred thousand dollars (\$500,000) in insurance subscribed in not less than 500 separate risks. The surplus of ~~such the~~ company shall at all times be maintained at or above ~~the amount required hereinabove for organization of such company, that amount.~~
 - b. Assessable mutual companies. -- A mutual insurance company with assessment liability provided for its policyholders may be organized in the manner prescribed in ~~Articles 1 through 64 of this Chapter~~ and licensed to do one or more of the kinds of insurance specified in ~~subdivisions G.S. 58-7-15 (3), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (21) and (22) of G.S. 58-7-15~~ when it has a minimum paid-in initial surplus of four hundred thousand dollars (\$400,000) and not less than five hundred thousand dollars (\$500,000) of insurance subscribed in not less than 500 separate risks. ~~Such~~

The company shall at all times maintain a surplus in an amount not less than four hundred thousand dollars (\$400,000). The assessment liability of a policyholder of ~~such~~ the company shall not be limited to less than one annual premium.

(8) Organization of Mutual Multiple Line Companies.

- a. Assessable mutual companies. -- A company may do all the kinds of insurance authorized to be done by a company organized under the provisions of ~~paragraph a of subdivision (5) sub-subdivision (5)a, hereof (limited assessment mutual fire and marine companies), and paragraph b of subdivision (7) sub-subdivision (7)b of this subdivision, hereof (assessable mutual casualty, fidelity and surety companies),~~ where its charter so permits when and if it meets the combined minimum requirements of ~~said those paragraphs, sub-subdivisions.~~ The assessment liability of policyholders of such a company shall not be limited to less than one annual premium within any one policy year.
- b. Nonassessable mutual companies. -- A company may do all the kinds of insurance authorized to be done by a company organized under the provisions of ~~paragraph c of subdivision (5), sub-subdivision (5)c, hereof (nonassessable mutual fire and marine companies), and paragraph a of subdivision (7) sub-subdivision (7)a of this subdivision, hereof (nonassessable mutual casualty, fidelity and surety companies),~~ where its charter so permits when and if it meets the combined minimum requirements of ~~said those paragraphs.~~ The policyholders of such a company shall not be subject to any assessment liability.

(9) ~~Time for Compliance. -- Any domestic, foreign or alien company licensed to do business in North Carolina prior to July 1, 1979, shall be permitted to continue to do the same kinds of business which it was authorized to do on such date without being required to increase its capital and/or surplus, provided however, such insurers shall increase the capital and surplus requirements to the amounts set forth in this section G.S. 58-7-75 on or before July 1, 1987, but the requirements of this section as to capital and surplus shall apply to such companies as a prerequisite to writing additional lines of business, and to such companies as a prerequisite to commencing business if unlicensed prior to July 1, 1979,~~

- (10) Impairment of Capital and/or Surplus. -- Whenever the Commissioner finds from a financial statement made by any ~~such~~ company, or from a report of examination of any ~~such~~ company, that its admitted assets are less than the aggregate amount of its liabilities and its outstanding capital stock and/or required minimum surplus, ~~he~~ the Commissioner shall determine the amount of ~~such~~ the impairment of capital and/or surplus and issue an order in writing requiring the company to eliminate the impairment within such period of not more than 90 days as ~~he~~ the Commissioner shall designate. The Commissioner may, by order served upon the company, prohibit the company from issuing any new policies while ~~such~~ the impairment exists. If at the expiration of the designated period the company has not satisfied the Commissioner that the impairment has been eliminated, an order for the rehabilitation or liquidation of the company may be entered as provided in Article 17A, ~~Chapter 58 of the General Statutes of North Carolina, 30 of this Chapter.~~"

Sec. 33. G.S. 58-42-55 reads as rewritten:

"§ 58-42-55. *Expiration.*

This Article shall expire on July 1, ~~1991~~, 1993."

Sec. 34. G.S. 143-143.13(a) reads as rewritten:

"(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

- (1) Material misstatement in application for license;
- (2) Failure to post an adequate corporate surety bond, cash bond or fixed value equivalent thereof;
- (3) Engaging in the business of manufactured home manufacturer, dealer, salesman or set-up contractor without first obtaining a license from the Board;
- (4) Failure to comply with the warranty service obligations and claims procedure established by this Article;
- (5) Failure to comply with the set-up and tie-down requirements established by this Article;
- (6) Having knowingly failed or refused to account for or to pay over moneys or other valuables belonging to others which have come into licensee's possession arising out of the sale of manufactured homes;
- (7) Use of unfair methods of competition or unfair or deceptive commercial acts or practices;
- (8) Failure to comply with any provision of this Article;

- (9) Failure to appear before the Board upon due notice or to follow directives of the Board issued pursuant to this Article;
- (10) Employing unlicensed retail salesmen;
- (11) Knowingly offering for sale the products of manufacturers who are not licensed pursuant to this Article or selling, to dealers not licensed pursuant to this Article, manufactured homes which are to be sold in this State to buyers as defined in this Article;
- (12) Conviction of a felony or any crime involving moral turpitude;
- (13) Having had a license revoked, suspended or denied by the Board under this Article; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this Article, Article;
- (14) Knowingly engaging any person to perform set-up operations who is not licensed by the Board as a set-up contractor."

Sec. 35. G.S. 143-143.11(a) reads as rewritten:

"(a) It shall be unlawful for any manufactured home manufacturer, dealer, salesman or set-up contractor to engage in business as such in this State without first obtaining a license from the ~~North Carolina Manufactured Housing~~ Board, as provided in this Article. The fact that a person is licensed by the Board as a set-up contractor or a dealer does not preempt any other licensing boards' applicable requirements for that person."

Sec. 36. Article 9A of Chapter 143 of the General Statutes is amended by adding a new section to read:

" § 143-143.25. Staff support for Board.

The Manufactured Housing Division of the Department shall provide clerical and other staff services required by the Board; and shall administer and enforce all provisions of this Article and all rules adopted under this Article, subject to the direction of the Board; except for powers and duties delegated by this Article to local units of government, other State agencies, or to any persons."

Sec. 37. G.S. 58-50-40 reads as rewritten:

" § 58-50-40. Willful failure to pay group insurance premiums; notice to persons insured; penalty; restitution; examination of insurance transactions.

(a) As used in this section and in G.S. 58-50-45, the term 'group health insurance' means: (1) any policy described in G.S. 58-51-75, 58-51-80, or 58-51-90; (2) any group insurance certificate or group

subscriber contract issued by a hospital service corporation pursuant to Articles 65 and 66 of this Chapter; (3) any health care plan provided or arranged by a health maintenance organization pursuant to Article 67 of this Chapter; or (4) any multiple employer welfare arrangement as defined in G.S. 58-49-30(a). As used in this section and in G.S. 58-50-45, the term 'insurance fiduciary' means any person, employer, principal, agent, trustee, or third party administrator, who is responsible for the payment of group health or group life insurance premiums. As used in this section and in G.S. 58-50-45, 'premiums' includes contributions to a multiple employer welfare arrangement.

(b) No insurance fiduciary shall:

- (1) Cause the cancellation or nonrenewal of group health or group life insurance and the consequential loss of the coverages of the persons insured by willfully failing to pay such premiums in accordance with the terms of a group health or group life insurance contract; and
- (2) Willfully fail to deliver, at least ~~30~~ 45 days ~~prior to~~ before the termination of such insurance, to ~~each named insured all persons covered by the group policy~~ a written notice of the insurance fiduciary's intention to stop payment of premiums.

(c) Any insurance fiduciary who violates subsection (b) of this section shall be guilty of a Class J ~~felony if the group health or life insurance was, in whole or in part, paid for out of wages withheld or other funds collected from the persons insured, felony.~~

~~(d) Any insurance fiduciary who violates subsection (b) of this section shall be subject only to the court order for restitution provided for in subsection (e) of this section if the group health or life insurance covered 15 or more persons and was fully paid for by the insurance fiduciary.~~

~~(e) Upon conviction under subsection (c) or a finding under subsection (d) of this section of a violation of subsection (b) of this section the court shall order the insurance fiduciary to make full restitution to persons insured who incurred expenses that would have been covered by the group health insurance or full restitution to beneficiaries of the group life insurance for death benefits that would have been paid if the coverage had not been terminated.~~

(f) Insurance fiduciaries subject to this section shall be subject to the provisions of G.S. 58-2-200 with respect only to transactions involving group health or life insurance.

(g) In the notice required by subsection (b) of this section, the insurance fiduciary shall also notify ~~the persons insured~~ those persons of their rights to health insurance conversion policies under Article 53 of this Chapter and their rights under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA).

(h) In the event of the insolvency of an employer or insurance fiduciary who has violated this section, any person specified in subsection (e) of this section shall have a lien upon the assets of such the employer or insurance fiduciary for the expenses or benefits specified in subsection (e) of this section. With respect to personal property within the estate of the insolvent employer or insurance fiduciary, such the lien shall have priority over unperfected security interests. "

Sec. 38. G.S. 58-50-45 reads as rewritten:

" § 58-50-45. *Group health or life insurers to notify insurance fiduciaries of obligations.*

(a) On and after January 1, 1986, upon the issuance or renewal of any policy, contract, certificate, or evidence of coverage of group health or life insurance, the insurer, corporation, or health maintenance organization shall give written notice to the insurance fiduciary of the provisions of G.S. 58-50-40.

(b) The notice required by subsection (a) of this section shall be printed in 10 point type and shall read as follows:

'UNDER NORTH CAROLINA GENERAL STATUTE SECTION 58-50-40, NO PERSON, EMPLOYER, PRINCIPAL, AGENT, TRUSTEE, OR THIRD PARTY ADMINISTRATOR, WHO IS RESPONSIBLE FOR THE PAYMENT OF GROUP HEALTH OR LIFE INSURANCE OR HEALTH CARE PLAN PREMIUMS, ~~FOR WHICH PAYMENT WAGES OR OTHER FUNDS ARE WITHHELD FROM THE PERSONS INSURED,~~ PREMIUMS, SHALL: (1) CAUSE THE CANCELLATION OR NONRENEWAL OF GROUP HEALTH OR LIFE INSURANCE, HOSPITAL, MEDICAL, OR DENTAL SERVICE PLAN, MULTIPLE EMPLOYER WELFARE ARRANGEMENT, OR HEALTH CARE PLAN COVERAGES AND THE CONSEQUENTIAL LOSS OF THE COVERAGES OF THE PERSONS INSURED, BY WILLFULLY FAILING TO PAY SUCH PREMIUMS IN ACCORDANCE WITH THE TERMS OF THE INSURANCE OR PLAN CONTRACT, AND (2) WILLFULLY FAIL TO DELIVER, AT LEAST 30 45 DAYS PRIOR TO THE TERMINATION OF SUCH COVERAGES, ~~TO EACH NAMED INSURED ALL PERSONS COVERED BY THE GROUP POLICY~~ A WRITTEN NOTICE OF THE PERSON'S INTENTION TO STOP PAYMENT OF PREMIUMS. THIS WRITTEN NOTICE MUST ALSO CONTAIN A NOTICE TO ~~THE NAMED INSUREDS ALL PERSONS COVERED BY THE GROUP POLICY~~ OF THEIR RIGHTS TO HEALTH INSURANCE CONVERSION POLICIES UNDER ARTICLE 53 OF GENERAL STATUTES CHAPTER 58 AND THEIR RIGHTS UNDER THE FEDERAL CONSOLIDATED OMNIBUS BUDGET

RECONCILIATION ACT (COBRA). VIOLATION OF THIS LAW IS A ~~FELONY IF THE INSURANCE IS, IN WHOLE OR IN PART, PAID FOR OUT OF WAGES WITHHELD OR OTHER FUNDS COLLECTED FROM THE PERSONS INSURED,~~ FELONY. ANY PERSON VIOLATING THIS LAW IS ALSO SUBJECT TO A COURT ORDER REQUIRING THE PERSON TO COMPENSATE PERSONS INSURED FOR EXPENSES OR LOSSES INCURRED AS A RESULT OF THE TERMINATION OF THE INSURANCE."

Sec. 39. G.S. 58-36-10 reads as rewritten:

" § 58-36-10. *Method of rate making; factors considered.*

The following standards shall apply to the making and use of rates:

- (1) Rates shall not be excessive, inadequate or unfairly discriminatory.
- (2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which such information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.
- (3) In the case of fire insurance rates, as are subject to the ratemaking authority of the Bureau, consideration may be given to the experience of such fire insurance business during the most recent five-year period for which such experience is available. In the case of fire insurance rates that are subject to the ratemaking authority of the Bureau, consideration shall be given to the insurance public protection classifications of rural fire districts based upon standards established by the Commissioner. To the extent credits are provided for proximity to fire hydrants, the Bureau may also provide appropriate credits in public protection classifications for optional water sources, such as ponds, lakes, or other bodies of water, in accordance with

standards and procedures filed with and approved by the Commissioner.

- (4) Risks may be grouped by classifications and lines of insurance for establishment of rates and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau is directed to establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction within 90 days of September 1, 1977. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or sex of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence, and shall at least once every 10 years make a complete review of the territories for nonfleet private passenger motor vehicle insurance to determine whether they are proper and reasonable.
- (5) In the case of workers' compensation insurance and employers' liability insurance written in connection therewith, due consideration shall be given to the past and prospective effects of changes in compensation benefits and in legal and medical fees that are provided for in General Statutes Chapter 97."

Sec. 40. G.S. 58-40-25 reads as rewritten:

" § 58-40-25. *Rating methods.*

In determining whether rates comply with the standards under G.S. 58-40-20, the following criteria shall be applied:

- (1) Due consideration shall be given to past and prospective loss and expense experience within this State, to catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to trends within this State, to dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors, including judgment factors; ~~Provided, however, that~~ however, regional or countrywide expense or loss experience and other regional or countrywide data may be considered only when credible North Carolina expense or loss experience or other data is not available.

- (2) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. ~~Such~~ Those standards may measure any differences among risks that have probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. ~~Such~~ Those classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.
- (3) The expense provisions included in the rates to be used by an insurer may reflect the operating methods of the insurer and, as far as it is credible, its own expense experience.
- (4) With respect to fire insurance, to the extent credits are provided for proximity to fire hydrants, insurers may also provide appropriate credits in public protection classifications for optional water sources, such as ponds, lakes, or other bodies of water, in accordance with standards and procedures filed with and approved by the Commissioner."

Sec. 41. G.S. 58-21-65 is amended by adding a new subsection to read:

"(f) A person licensed as a surplus lines licensee under the laws of a state bordering this State may be licensed as a surplus lines licensee under this Article, if: (i) the laws of the bordering state are substantially similar to the provisions of this Article and (ii) the bordering state has a law or regulation substantially similar to this subsection that permits surplus lines licensees licensed under this Article to be licensed by the bordering state and (iii) the person complies with all requirements of this Article and submits himself or herself to the Commissioner's jurisdiction."

Sec. 42. G.S. 58-21-75 reads as rewritten:

" § 58-21-75. Records of surplus lines licensee.

Each surplus lines licensee shall keep in his or her office in this State a full and true record of each surplus lines insurance contract placed by or through ~~him~~, the licensee, including a copy of the policy, certificate, cover note, or other evidence of ~~insurance, which~~ insurance. The record shall include the following items:

- (1) Amount of the insurance and perils insured;
- (2) Brief description of the property insured and its location;
- (3) Gross premium charged;

- (4) Any return premium paid;
- (5) Rate of premium charged upon the several items of property;
- (6) Effective date of the contract, and the terms ~~thereof~~; of the contract;
- (7) Name and address of the insured;
- (8) Name and address of the insurer;
- (9) Amount of tax and other sums to be collected from the insured; and
- (10) Identity of the producing broker, any confirming correspondence from the insurer or its representative, and the application.

The record of each contract shall be kept open at all reasonable times to examination by the Commissioner without notice for a period not less than ~~five~~ three years following termination of the contract."

Sec. 43. ~~G.S. 58-1-20 reads as rewritten:~~

" § 58-1-20. *Real property warranties.*

(a) Any warranty relating to ~~tangible personal property~~ or fixtures to real property issued ~~in connection with the sale of real property~~ by a person ~~as defined in this Article~~ shall be is a contract of insurance, except the following, which shall not be contracts of insurance; following:

- (1) A warranty made by a builder or seller of the real property;
- (2) A warranty ~~incidental to the sale of real property~~ providing for the repair or replacement of the items covered by the warranty for defective parts and mechanical failure or resulting from ordinary wear and tear, ~~which warranty excludes and excluding~~ from its coverage damage from recognizable ~~perils~~ perils, such as fire, flood, and wind, ~~which perils do not~~ that neither relate to any defect in the items covered nor result from ordinary wear and tear. ~~Any person issuing such warranties shall post a surety bond with the Secretary of State in the principal sum of not less than seventy-five thousand dollars (\$75,000), which bond shall be subject to the approval of the Secretary of State. Any person to whom the warranty is issued has the right to institute an action to recover against the warrantor and the surety bond for breach of warranty.~~

(b) It is unlawful for any person to issue a warranty specified in subdivision (a)(2) of this section unless that person has posted a surety bond with the Secretary of State in the principal sum of not less than one hundred thousand dollars (\$100,000). The bond must be issued by a surety company licensed to do business in this State and is subject to the approval of the Secretary of State. Any person to whom

the warrantor is issued may institute an action to recover against the warrantor and the surety bond for any breach of warranty."

Sec. 44. Sections 8, 9, and 12 of this act become effective September 1, 1991. Sections 1, 15, 16, 19, 22, 23, 28, 37 through 41, and 43 of this act become effective October 1, 1991. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

S.B. 398

CHAPTER 645

AN ACT TO AMEND THE BUSINESS CORPORATION ACT AND MAKE A CONFORMING AMENDMENT TO G.S. 47-18.1 AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND TO AMEND CERTAIN OTHER STATUTES PERTAINING TO CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-1-28(b)(3) reads as rewritten:

"(3) That all fees, taxes, and penalties owed to this State have been paid, if (i) payment is reflected in the records of the Secretary of State and (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation; the articles of incorporation of a domestic corporation or the certificate of authority of a foreign corporation has not been suspended for failure to comply with the Revenue Act of this State and that the corporation has not been administratively dissolved for failure to comply with the provisions of this Chapter;".

Sec. 2. (a) G.S. 55-4-05(b) reads as rewritten:

"(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. If the corporation involved is not a domestic corporation or a foreign corporation authorized to do business in this State, In the case of a foreign corporation, a similar certificate by any competent authority of the jurisdiction of incorporation may be registered in accordance with this section."

(b) G.S. 47-18.1(b) reads as rewritten:

"(b) The Secretary of State shall adopt uniform certificates of merger or consolidation, to be furnished for registration, and shall adopt such fees as are necessary for the expense of such certification. If the corporation involved is not a domestic corporation, a similar certificate by any competent authority in the jurisdiction of incorporation may be registered in accordance with this section."

Sec. 3. G.S. 55-5-02 is amended by adding a new subsection (c) to read:

"(c) A corporation may change its registered office or registered agent by including in its annual report required by G.S. 55-16-22 the information and any written consent required by subsection (a)."

Sec. 4. (a) G.S. 55-6-40(h) reads as rewritten:

"(h) Any action by a shareholder pursuant to subsection (i) and (j) of this section to compel the payment of dividends may be brought against the directors, or against the corporation with or without joining the directors as parties. The shareholder bringing such action shall be entitled, in the event that the court orders the payment of a dividend, to recover from the corporation all reasonable expenses, including attorney's fees, incurred in maintaining such action. If a court orders the payment of a dividend, the amount ordered to be paid shall be a debt of the corporation."

(b) G.S. 55-6-40 is amended by adding a new subsection (k) to read:

"(k) Nothing in this section shall impair any rights which a shareholder may have on general principles of equity to compel the payment of dividends."

Sec. 5. G.S. 55-7-21.1 reads as rewritten:

"§ 55-7-21.1. Rights of holders of debt securities."

In addition to any rights otherwise lawfully conferred, the articles of incorporation of the corporation may confer upon the holders of any bonds, debentures or other debt obligations issued or to be issued by the corporation any one or more of the following powers and rights upon such terms and conditions as may be prescribed in the articles of incorporation:

- (1) The power to vote on any matter either in conjunction with or to the full or partial exclusion of its shareholders, notwithstanding G.S. 55-6-01(c)(1), and in determination of votes and voting groups, the holders of such debt obligations shall be treated as shareholders:
- (2) The right to inspect the corporate books and records:
- (3) Any other rights concerning the corporation which its shareholders have or may have.

Any such power or right shall not be diminished, as to bonds, debentures or other obligations then outstanding, except by an amendment of the articles of incorporation approved by the vote or written consent of the holders of a majority in principal amount thereof or such larger percentage as may be specified in the articles of incorporation."

Sec. 6. (a) G.S. 55-8-08(c) reads as rewritten:

"(c) If cumulative voting is authorized, unless the entire board of directors is to be removed, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him."

(b) G.S. 55-8-08 is amended by adding a new subsection (e) to read:

"(e) Unless otherwise provided in the articles of incorporation or a bylaw adopted by the shareholders, the entire board of directors may be removed from office with or without cause by the affirmative vote of a majority of the votes entitled to be cast at any election of directors."

Sec. 7. (a) G.S. 55-8-20(b) reads as rewritten:

"(b) Unless otherwise provided by the articles of incorporation, or the bylaws provide otherwise, or the board of directors, may permit any or all directors may to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting."

(b) G.S. 55-8-20 is amended by adding a new subsection (c) to read:

"(c) Unless the bylaws provide otherwise, special meetings of the board of directors may be called by the president or any two directors."

Sec. 8. G.S. 55-10-03(e) reads as rewritten:

"(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

- (1) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and
- (2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other voting group entitled to vote on the amendment."

Sec. 9. G.S. 55-10-05 reads as rewritten:

"§ 55-10-05. Amendment before issuance of shares."

If a corporation has not yet issued shares, the board of directors, or if the corporation has no directors, a majority of the its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation."

Sec. 10. (a) G.S. 55-10-06 reads as rewritten:

" § 55-10-06. *Articles of amendment.*

A corporation amending its articles of incorporation shall deliver to the Secretary of State for filing articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment adopted;
- (3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;
- (4) The date of each amendment's adoption;
- (5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that a brief explanation of why shareholder action was not required;
- (6) If an amendment was approved by the shareholders ~~(i) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting~~ (ii) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group, , a statement that shareholder approval was obtained as required by this Chapter."
- (b) G.S. 55-11-05(a)(3) reads as rewritten:
"(3) If approval of the shareholders of one or more corporations party to the merger or share exchange was required ~~(i) the designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation, and (ii) either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group , a statement that the merger or share exchange was approved by the shareholders as required by this Chapter."~~
- (c) G.S. 55-14-03(a)(3) and (4) read as rewritten:
"(3) ~~With respect to the shareholders (i) the number of votes entitled to be cast on the proposal to dissolve, and (ii)~~

~~either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval. A statement that shareholder approval was obtained as required by this Chapter.~~

- (4) ~~If voting by voting groups was required, the information required by subparagraph (3) must be separately provided for each voting group entitled to vote separately on the plan to dissolve."~~

Sec. 11. G.S. 55-10-07(b) reads as rewritten:

"(b) The restated articles of incorporation may include one or more amendments to the articles. If the restated articles of incorporation include an amendment requiring shareholder approval, it must be adopted as provided in G.S. 55-10-03. The restated articles of incorporation may include a statement of the address of the current registered office and the name of the current registered agent of the corporation, and no other."

Sec. 12. G.S. 55-13-02(a)(3) reads as rewritten:

- "(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than ~~in the usual and regular course of business~~ as permitted by G.S. 55-12-01, including a sale in dissolution, but not including a sale pursuant to court order or a sale pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed in cash to the shareholders within one year after the date of sale;"

Sec. 13. Article 15 of Chapter 55 is amended by adding a new section to read:

"§ 55-15-21. Withdrawal of foreign corporation by reason of a merger.

(a) Whenever the separate existence of a foreign corporation authorized to transact business in this State ceases as a result of a statutory merger permitted by the laws of the state or country under which it was incorporated, the surviving corporation shall apply for a certificate of withdrawal for the merged corporation by delivering to the Secretary of State for filing a copy of the articles of merger or a certificate reciting the facts of the merger, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under the laws of which such statutory merger was effected. If the surviving corporation is not authorized to transact business in this State the articles of merger or certificate must be accompanied by an application which must set forth:

- (1) The name of each merged corporation authorized to transact business in this State and the name of the surviving

corporation and a statement that the surviving corporation is not authorized to transact business in this State;

- (2) That the surviving corporation consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time each merged corporation was authorized to transact business in this State may thereafter be made on such corporation by service thereof on the Secretary of State;
- (3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2); and
- (4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the articles of merger or certificate and the application for withdrawal, if required, conforms to law he shall:

- (1) Endorse on the articles of merger or certificate and the application for withdrawal, if required, the word 'filed' and the hour, day, month and year of the filing thereof;
- (2) File the articles of merger or certificate and the application, if required;
- (3) Issue a certificate of withdrawal; and
- (4) Send to the foreign corporation or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

Sec. 14. G.S. 55-15-31 is amended by adding a new subsection (f) to read:

"(f) The corporation shall not be granted a new certificate of authority until each ground for revocation has been substantially corrected to the reasonable satisfaction of the Secretary of State."

Sec. 15. G.S. 55-1-20 is amended by adding a new subsection to read:

"(j) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Chapter may be a facsimile."

Sec. 16. (a) G.S. 55-7-25(a) reads as rewritten:

"(a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares of that voting group exists with respect to that matter, except that, in the absence of a quorum at the opening of any meeting of shareholders, such meeting may be adjourned from time to time by the vote of a majority of the shares voting votes cast on the motion to adjourn. Unless the articles of incorporation, a bylaw adopted by the

shareholders, or this act provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter."

(b) G.S. 55-7-28(d) reads as rewritten:

"(d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

- (1) The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or
- (2) A shareholder or proxy who has the right to cumulate his votes announces in open meeting, before voting for directors starts, his intention to vote cumulatively; and if such announcement is made, the chair shall declare that all shares entitled to vote have the right to vote cumulatively and shall announce the number of ~~shares present~~ votes represented in person and by proxy, and shall thereupon grant a recess of not less than one hour nor more than four hours, as he shall determine, or of such other period of time as is unanimously then agreed upon."

Sec. 17. (a) G.S. 55-7-02(a) reads as rewritten:

"(a) A corporation shall hold a special meeting of shareholders:

(1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) If Within 30 days after the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held; except however that, unless otherwise provided in the articles of incorporation or bylaws, the call of a special meeting by shareholders is not available to the shareholders of a public corporation."

(b) G.S. 55-7-03(a) reads as rewritten:

"(a) The superior court of the county where a corporation's principal office (or, if none in this State, its registered office) is located may, after notice is given to the corporation, summarily order a meeting to be held:

- (1) On application of any shareholder if an annual meeting of the shareholders was not held within 15 months after the corporation's last annual meeting; or
- (2) On application of a shareholder who signed a demand for a special meeting valid under G.S. 55-7-02, if ~~(i) notice of the~~

~~special meeting was not given within 30 days after the date the demand was received by the corporation's secretary; or (ii) the special meeting was not held in accordance with the notice, the corporation does not proceed to hold the meeting as required by that section."~~

Sec. 18. G.S. 55-10-07(d) reads as rewritten:

"(d) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement which shall:

- (1) Set forth the name of the corporation;
- (2) Attach as an exhibit thereto the text of the restated articles of incorporation;
- (3) State whether the restated articles of incorporation contain an amendment to the articles requiring shareholder approval and, if they do not, that the board of directors adopted the restated articles of incorporation; and
- (4) If the restated articles of incorporation contain an amendment to the articles requiring shareholder approval, set forth the information required by G.S. 55-10-06, state that shareholder approval was obtained as required by this Chapter."

Sec. 19. G.S. 55-7-28(e) reads as rewritten:

"(e) Shareholders of a corporation incorporated in this State shall have the right to cumulate their votes for directors if

- (1) The corporation was in existence prior to July 1, 1957, under a charter which does not grant the right of cumulative voting and at the time of the election the stock transfer book of such corporation discloses, or it otherwise appears, that there is at least one stockholder who owns or controls more than one-fourth of the voting stock of such corporation (shares represented at a meeting by revocable proxy relating to that meeting or adjourned meetings thereof shall not be deemed shares 'controlled' within the meaning of this subsection), or if
- (2) The corporation was incorporated on or after July 1, 1957, and before July 1, 1990,

unless, when the stock transfer books are closed or at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders, ~~shares of any class or series are listed on a national securities exchange or are held of record by more than 2,000 shareholders,~~ the corporation is a public corporation as defined in G.S. 55-1-40(18a). This right to vote cumulatively may be denied or limited by amendment to the articles of incorporation, but no such amendment shall be made when the number of shares voting

against the amendment would be sufficient to elect a director by cumulative voting if such shares are entitled to be voted cumulatively for the election of directors."

Sec. 20. G.S. 55B-15 reads as rewritten:

" § 55B-15. *Applicability of Chapter.*

This Chapter shall not apply to any corporation which prior to June 5, 1969, was permitted by law to render professional services as herein defined or to the corporate successor of any such corporation by merger or otherwise by operation of law, provided there is no substantial change in the direct or indirect beneficial ownership of the shares of such corporation as the result of such merger or other transaction; for purposes of this section, a change of twenty percent (20%) or less shall not be considered substantial; provided, however, any . Any such corporation or successor corporation rendering 'professional service' as defined in G.S. 55B-2(6) may be brought within the provisions of this Chapter by the filing of an amendment to its articles of incorporation declaring that its shareholders have elected to bring the corporation within the provisions of this Chapter and to make the same conform to all of the provisions of this Chapter."

Sec. 21. G.S. 105-232 reads as rewritten:

" § 105-232. *Corporate rights restored; receivership and liquidation.*

(a) Any corporation whose articles of incorporation or certificate of authority to do business in this State has been suspended by the Secretary of State, State as provided in G.S. 105-230, which complies within five years after such suspension, that complies with all the requirements of this Subchapter and pays all State taxes, fees, or penalties due from it (which total amount due may be computed, for years prior and subsequent to ~~said~~ the suspension, in the same manner as if ~~such~~ the suspension had not taken place), and ~~upon payment~~ pays to the Secretary of Revenue of a fee of twenty-five dollars (\$25.00) to cover the cost of reinstatement, ~~shall be~~ is entitled to exercise again its rights, privileges, and franchises in this State. The Secretary of Revenue shall notify the Secretary of State of ~~such~~ this compliance and the Secretary of State shall reinstate the corporation by appropriate entry upon the records of ~~his office, the~~ Office of Secretary of State. The Secretary of State shall immediately notify the corporation of the reinstatement.

(b) When the ~~certificate or~~ articles of incorporation or certificate of authority to do business in this State ~~have~~ has been suspended by the Secretary of State, State as provided in G.S. 105-230, or similar provisions of prior or subsequent Revenue Acts, and and the corporation has ceased to operate as a going concern, if there remains property held in the name of the corporation, or undisposed of at the time of ~~such~~ the suspension, or there remain ~~possibilities of reverts,~~

~~reversionary interests, rights of reentry or other future interests that may accrue to the corporation or its successors or stockholders, and the time within which the corporate rights might be restored as provided by this section has expired, any stockholder or any bona fide creditor~~ any stockholder, bona fide creditor, or other interested party may apply to the superior court for the appointment of a receiver. Application for ~~such~~ the receiver may be made in a civil action to which all stockholders or their representatives or next of kin shall be made parties. Stockholders whose whereabouts are ~~unknown and unknown~~, unknown ~~stockholders and~~ stockholders, unknown heirs and next of kin of deceased ~~stockholders~~ stockholders, creditors, dealers, and other interested persons may be served by ~~publication, as well as creditors, dealers and other interested persons, and a publication.~~ A guardian ad litem may be appointed for any stockholders or their representatives who may be an infant or incompetent. The receiver shall enter into ~~such~~ a bond with ~~such~~ sureties as may be set by if the court requires one and shall give ~~such~~ notice to creditors by publication or otherwise as the court may prescribe. Any creditor who ~~shall fail~~ fails to file his a claim with the receiver within the time set shall be barred of the right to participate in the distribution of the assets. ~~Such~~ The receiver shall have authority to may (i) sell ~~such~~ the property or possibilities of ~~reverters, reversionary interests, rights of reentry, or other future interests,~~ interests of the corporation upon such terms and in such manner as ~~shall be ordered by the court, the court may order,~~ (ii) apply the proceeds to the payment of any debts of ~~such~~ the corporation, and (iii) distribute the remainder among the stockholders or their representatives in proportion to their interests ~~therein, in the property interests.~~ Shares due to any stockholder who is unknown or whose whereabouts are unknown shall be paid into the office of the clerk of the superior court, ~~by him~~ to be disbursed according to ~~law, in law.~~ In the event the stock books of the corporation ~~shall be lost or shall~~ are lost or do not reflect the latest stock transfers, the court shall determine the respective interests of the stockholders from the best evidence available, and the receiver shall be protected in acting in accordance with ~~such finding.~~ ~~Such the court's finding.~~ This proceeding is authorized for the sole purpose of providing a procedure for disposing of the corporate assets by the payment of corporate debts, including franchise taxes which had accrued prior to the suspension of the corporate charter and any other taxes the assessment or collection of which is not barred by a statute of limitations, and by the transfer to the stockholders or their representatives their proportionate shares of the assets owned by the corporation."

Sec. 22. This act is effective Oct. 1, 1991 except for Sections 19-21 which are effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

S.B. 688

CHAPTER 646**AN ACT TO PROHIBIT THE STACKING OF UNINSURED AND UNDERINSURED MOTORIST COVERAGE.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-279.21(b)(3) reads as rewritten:

"(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, ~~in limits for bodily injury or death set forth in subsection (c) of G.S. 20-279.5,~~ under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, ~~resulting therefrom; provided, an insured is entitled to secure additional coverage up to the limits of bodily injury liability in the owner's policy of liability insurance that he carries for the protection of third persons, therefrom, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars (\$1,000,000), as selected by the policy owner. Such~~ The provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident of up to the limits of property damage liability in the owner's policy of liability insurance, and subject, for each insured, to an exclusion of the first one hundred dollars (\$100.00) of such damages. ~~Such~~ The provision shall further provide that a written statement by the liability insurer, whose name appears on the

certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that ~~such the~~ other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a *prima facie* presumption that the operator of ~~such the~~ other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy. The coverage required under this subdivision ~~shall~~ is not ~~be~~ applicable where any insured named in the policy ~~shall reject~~ rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. Once the named insured exercises this option, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless the named insured makes a written request to exercise a different option. The selection or rejection of uninsured motorist coverage by a named insured is valid and binding on all insureds and vehicles under the policy. If the named insured rejects the coverage required under this subdivision, the insurer shall is not be required to offer the coverage in any renewal, reinstatement, substitute, amended, altered, modified, transfer or replacement policy unless the named insured makes a written request for the coverage. Rejection of this coverage for policies issued after October 1, 1986, shall be made in writing by the named insured on a form promulgated by the North Carolina Rate Bureau and approved by the Commissioner of Insurance.

Where coverage is provided on more than one vehicle insured on the same policy or where the owner or the named insured has more than one policy with coverage under this subdivision, there shall not be permitted any combination of coverage within a policy or where more than one policy may apply to determine the total amount of coverage available.

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

- a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether ~~such~~ the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of ~~such~~ the notice to the insurer or its agent setting forth ~~the~~ the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.
- b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in ~~such~~ that event, the insured, or someone in his

behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in ~~such~~ the notice the time, date and place of ~~such~~ the injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer ~~such~~ any further reasonable information concerning the accident and the injury ~~as that~~ the insurer ~~shall request, requests~~. If ~~such~~ the forms are not ~~so~~ furnished within 15 days, the insured ~~shall be~~ is deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of ~~such~~ the injury or accident to the insurer at the address shown on the policy or after personal delivery of ~~such~~ the notice to the insurer or its agent. The failure to post notice to the insurer 60 days ~~in advance of~~ before the initiation of the suit shall not be grounds for dismissal of the action, but shall automatically extend the time for filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

Provided under this section the term 'uninsured motor vehicle' shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of ~~such~~ coverage, the insurer making ~~such~~ payment shall, to the extent thereof, be entitled to the

proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of ~~such that~~ person against any person or organization legally responsible for the bodily injury for which ~~such the~~ payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an 'uninsured motor vehicle' shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is ~~such that~~ insurance but the insurance company writing the ~~same~~ insurance denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of ~~such the~~ bodily injury and property damage liability insurance, or the owner of ~~such the~~ motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term 'uninsured motor vehicle' shall not include:

- a. A motor vehicle owned by the named insured;
- b. A motor vehicle ~~which that~~ is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
- c. A motor vehicle ~~which that~~ is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);
- d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
- e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section 'persons insured' means the named insured and, while resident of the same household, the spouse of any ~~such~~ named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in ~~such the~~ motor vehicle to which the

policy applies or the personal representative of any of the above or any other person or persons in lawful possession of ~~such~~ the motor vehicle."

Sec. 2. G.S. 20-279.21(b)(4) reads as rewritten:

"(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with ~~policies~~ a policy that ~~are~~ is written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount ~~equal to the policy limits for~~ not to be less than the financial responsibility amounts ~~for~~ bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars (\$1,000,000) as selected by the policy owner, automobile bodily injury liability as specified in the owner's policy. An 'uninsured motor vehicle,' as described in subdivision (3) of this subsection, includes an 'underinsured highway vehicle,' which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of liability underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For the purposes of this subdivision, the term 'highway vehicle' means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage ~~shall be~~ is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of ~~such that~~ liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage ~~shall be~~ is deemed to occur when either (a) the limits of liability per claim have been paid upon ~~such~~ the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid.

Underinsured motorist coverage ~~shall be~~ is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant ~~pursuant to under the exhausted liability policy.~~

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant pursuant to under the exhausted liability policy or policies and the total limits of the owner's underinsured motorist coverages provided in the owner's policies of insurance; it being the intent of this paragraph to provide to the owner, in limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; Provided provided that this paragraph sentence shall apply only to insurance on nonfleet private passenger motor vehicle insurance vehicles as defined described in G.S. 58-131.36(9) and (10), G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of ~~such~~ payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a

policy providing coverage against an underinsured motorist where the insurer has been provided with written notice ~~in advance of~~ before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of ~~such~~ that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that ~~such~~ the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall ~~prior to~~ before doing so give notice to ~~such~~ the insurer and give ~~such~~ the insurer, at its expense, the opportunity to participate in the prosecution of ~~such~~ the claim. Upon the entry of judgment in a suit upon any ~~such~~ claim in which the underinsured motorist insurer and claimant are joined, payment upon ~~such~~ the judgment, unless otherwise agreed to, shall be applied *pro rata* to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for ~~such~~ those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of ~~such~~ notice, the underinsured motorist insurer shall have the right to appear in defense of ~~such~~ the claim without being named as a party therein, and without being named as a party may participate in ~~such~~ the suit as fully as if it were a party.

The underinsured motorist insurer may elect, but may not be compelled, to appear in ~~such the~~ action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, ~~prior to~~ before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in ~~such the~~ action on his separate behalf. ~~In the event that~~ If an underinsured motorist insurer, following the approval of ~~such the~~ application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, ~~such the~~ insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to ~~such the~~ owner, operator, or maintainer, a finding of liability or the award of damages shall be *res judicata* between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. Once the named insured exercises this option, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless the named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured is valid and binding on all insureds and vehicles under the policy.

If the named insured rejects the coverage required under this subdivision, the insurer shall not be required to offer the coverage in any renewal, reinstatement, substitute, amended, altered, modified, transfer or replacement policy unless the named insured makes a written request for the

coverage. Rejection of this coverage for policies issued after October 1, 1986, shall be made in writing by the named insured on a form promulgated by the North Carolina Rate Bureau and approved by the Commissioner of Insurance."

Sec. 3. Within 60 days after the ratification of this act the North Carolina Rate Bureau shall make appropriate rate and policy form filings with the Commissioner of Insurance to reflect the provisions of this act.

Sec. 4. Sections 1 and 2 of this act become effective 60 days after approval by the Commissioner of Insurance of all filings made by the Bureau under Section 3 of this act. The remainder of this act is effective upon ratification. This act shall not affect claims arising prior to; nor litigation pending on the effective date of Sections 1 and 2 of this act. This act shall apply only to new and renewal policies written on and after the effective date of Sections 1 and 2 of this act.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

S.B. 778

CHAPTER 647

AN ACT TO AMEND THE LAWS REGARDING THE EXECUTION OF CORPORATE INSTRUMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-17-05 reads as rewritten:

" § 55-17-05. *Curative statute.*

All deeds, conveyances and other instruments executed prior to the effective date of this Chapter and validated by the curative provisions of former G.S. 55-36.1 and former Article 12 of Chapter 55 as they were immediately prior to such effective date shall be valid and effective to the same extent as if those provisions had not been amended or repealed. The provisions of former G.S. 55-36 shall continue to apply to all instruments executed before July 1, 1990, to which that section applied."

Sec. 2. Article 2 of Chapter 47 of the General Statutes is amended by adding a new section to read:

" § 47-18.3. *Execution of corporate instruments; authority and proof.*

(a) Notwithstanding anything to the contrary in the bylaws or articles of incorporation, when it appears on the face of an instrument registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a domestic or foreign corporation by its chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer, and attested or countersigned by another person who

is its secretary or an assistant secretary, (or, in the case of a bank, its secretary, assistant secretary, cashier, or assistant cashier), such an instrument shall be as valid with respect to the rights of innocent third parties as if executed pursuant to authorization from the board of directors, unless the instrument reveals on its face a potential breach of fiduciary obligation. The subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(b) Any instrument registered in the office of the register of deeds, appearing on its face to be executed by a corporation, foreign or domestic, and bearing a seal which purports to be the corporate seal, setting forth the name of the corporation engraved, lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument, is *prima facie* evidence that the seal is the duly adopted corporate seal of the corporation, that it has been affixed as such by a person duly authorized so to do, that the instrument was duly executed and signed by persons who were officers or agents of the corporation acting by authority duly given by the board of directors, and that any such instrument is the act of the corporation, and shall be admissible in evidence without further proof of execution.

(c) Nothing in this section shall be deemed to exclude the power of any corporate representatives to bind the corporation pursuant to express, implied, inherent or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve corporate officers from liability to the corporation or from any other liability that they may have incurred from any violation of their actual authority.

(e) The Home Owners Loan Corporation or any corporation, the majority of whose stock is owned by the United States government, may convey lands or other property which is transferable by deed which is duly executed by either an officer, manager, or agent of said corporation, sealed with the common seal and has attached thereto a signed and attested resolution, under seal, of the board of directors of said corporation authorizing the said officer, manager, or agent to execute, sign, seal, and attest deeds, conveyances, or other instruments. This section shall be deemed to have been complied with if an attested resolution is recorded separately in the office of the register of deeds in the county where the land lies, which said resolution shall be applicable to all deeds executed subsequently thereto and pursuant to its authority. All deeds, conveyances, or other instruments which have been heretofore or shall be hereafter so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described therein."

Sec. 3. G.S. 47-41 is repealed. The provisions of G.S. 47-41 shall continue to apply to all instruments executed before the effective date of this section of this act.

Sec. 4. Article 3 of Chapter 47 of the General Statutes is amended by adding a new section to read:

" § 47-41.01. Corporate conveyances.

(a) The following forms of probate for deeds and other conveyances executed by a corporation shall be deemed sufficient, but shall not exclude other forms of probate which would be deemed sufficient in law.

(b) If the deed or other instrument is executed by the corporation's chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer signing the name of such corporation by him as such officer, is sealed with its common or corporate seal, and is attested by another person who is its secretary or assistant secretary, trust officer, assistant trust officer, associate trust officer, or, in case of a bank, its secretary, assistant secretary, cashier or assistant cashier, the following form of acknowledgment is sufficient:

.....

(State and county, or other
description of place where
acknowledgment is taken)

I,

(Name of officer taking
acknowledgment)

.....
(Official title of officer
taking acknowledgment)

certify thatpersonally came before

(Name of secretary, assistant secretary,
trust officer, assistant trust officer,
cashier or assistant cashier)

me this day and acknowledged that he (or she) is.....

(Secretary, assistant
secretary, trust officer,
assistant trust officer,
cashier or assistant
cashier)

of, a corporation, and that by authority duly

(Name of corporation)

given and as the act of the corporation, the foregoing instrument was
signed in its name by its.....

(Chairman, president, chief executive
officer, vice-president, assistant vice-president,
treasurer, or chief financial officer)

sealed with its corporate seal, and attested by himself (or herself) as its

.....
(Secretary, assistant secretary,
trust officer, assistant trust officer,
cashier or assistant cashier)

My commission expires

(Date of expiration of commission as notary
public)

Witness my hand and official seal, this theday of

.....
(Month)

.....
(Year)

.....
(Signature of officer taking acknowledgment)

(Official seal, if officer taking
acknowledgment has one)

- (1) The words 'a corporation' following the blank for the name
of the corporation may be omitted when the name of the
corporation ends with the word 'Corporation' or
'Incorporated.'
- (2) The words 'My commission expires' and the date of
expiration of the notary public's commission may be omitted
except when a notary public is the officer taking the
acknowledgment.
- (3) The words 'and official seal' and the seal itself may be
omitted when the officer taking the acknowledgment has no
seal or when such officer is the clerk, assistant clerk, or
deputy clerk of the superior court of the county in which the
deed or other instrument acknowledged is to be registered."

Sec. 5. Article 3 of Chapter 47 of the General Statutes is
amended by adding a new section to read:

" § 47-41.02. Other forms of probate for corporate conveyances.

(a) The following forms of probate for deeds and other conveyances
executed by a corporation shall also be deemed sufficient but shall not
exclude other forms of probate with would be deemed sufficient in
law.

(b) If the instrument is executed by the president or presiding
member or trustee and two other members of the corporation, and
sealed with the common seal, the following form shall be sufficient:

North Carolina, County.

This day of, A.D., personally came before me
(here give the name and official title of the officer who signs this
certificate) A.B. (here give the name of the subscribing witness), who,

being by me duly sworn, says that he knows the common seal of the (here give the name of the corporation), and is also acquainted with C.D., who is the president (or presiding member or trustee), and also with E.F. and G.H., two other members of said corporation; and that he, the said A.B., saw the said president (or presiding member or trustee) and the two said other members sign the said instrument, and saw the said president (or presiding member or trustee) affix the said common seal of said corporation thereto, and that he, the said subscribing witness, signed his name as such subscribing witness thereto in their presence. Witness my hand and (when an official seal is required by law) official seal, this day of (year).

(Official seal.)

.....
(Signature of officer.)

(c) If the deed or other instrument is executed by the president, presiding member or trustee of the corporation, and sealed with its common seal, and attested by its secretary or assistant secretary, either of the following forms of proof and certificate thereof shall be deemed sufficient:

North Carolina, County.

This day of, A.D., personally came before me (here give name and official title of the officer who signs the certificate) A.B. (here give the name of the attesting secretary or assistant secretary), who, being by me duly sworn, says that he knows the common seal of (here give the name of the corporation), and is acquainted with C.D., who is the president of said corporation, and that he, the said A.B., is the secretary (or assistant secretary) of the said corporation, and saw the said president sign the foregoing (or annexed) instrument, and saw the said common seal of said corporation affixed to said instrument by said president (or that he, the said A.B., secretary or assistant secretary as aforesaid, affixed said seal to said instrument), and that he, the said A.B., signed his name in attestation of the execution of said instrument in the presence of said president of said corporation. Witness my hand and (when an official seal is required by law) official seal, this the..... day of (year).

(Official seal.)

.....
(Signature of officer.)

North Carolina, County.

This is to certify that on the day of..... 19, before me personally came (president, vice-president, secretary or assistant secretary, as the case may be), with whom I am personally acquainted, who, being by me duly sworn, says that..... is the

president (or vice-president), and..... is the secretary (or assistant secretary) of the, the corporation described in and which executed the foregoing instrument: that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said president (or vice-president), and that said president (or vice-president) and secretary (or assistant secretary) subscribed their names thereto, and said common seal was affixed, all by order of the board of directors of said corporation, and that the said instrument is the act and deed of said corporation. Witness my hand and (when an official seal is required by law) official seal, this the day of (year).

(Official seal.)

.....
(Signature of officer.)

(d) If the deed or other instrument is executed by the signature of the president, vice-president, presiding member or trustee of the corporation, and sealed with its common seal and attested by its secretary or assistant secretary, the following form of proof and certificate thereof shall be deemed sufficient:

This day of, A.D., personally came before me (here give name and official title of officer who signs the certificate) A.B., who, being by me duly sworn, says that he is president (vice-president, presiding member or trustee) of the..... Company, and that the seal affixed to the foregoing (or annexed) instrument in writing is the corporate seal of said company, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said A.B. acknowledged the said writing to be the act and deed of said corporation.

(Official seal.)

.....
(Signature of officer.)

(e) All corporate conveyances probated and recorded prior to February 14, 1939, wherein the same was attested by the assistant secretary, instead of the secretary, and otherwise regular, are hereby validated as if attested by the secretary of the corporation.

(f) The following forms of probate for contracts in writing for the purchase of personal property by corporations providing for a lien on the property or the retention of a title thereto by the vendor as security for the purchase price or any part thereof, or chattel mortgages, chattel deeds of trust, and conditional sales of personal property executed by a corporation shall be deemed sufficient but shall not

exclude other forms of probate which would be deemed sufficient in law:

North Carolina

..... County

I,, do hereby certify that

.....

(Name of president,
secretary or treasurer)

personally came before me this day and acknowledged that he is
..... of and acknowledged,

(President, secretary (Name of corporation)
or treasurer)

on behalf of, the grantor, the due

(Name of corporation)

execution of the foregoing instrument.

Witness my hand and official seal, thisday of.....,

19.....

(Official seal)

.....
(Title of officer)

.....
(Name of state)

.....
(County)

I,
(Name of officer taking proof) (Official title of officer taking proof)
of, certify that

(County) (Name of state)

..... personally appeared before

(Name of subscribing witness)

me, and being duly sworn, stated that in his presence

.....
(Name of president, secretary or treasurer of maker)

(signed the foregoing instrument) (acknowledged the execution of the
foregoing instrument.) (Strike out the words not applicable.)

Witness my hand and official seal, thisday of

....., 19.....

(Month) (Year)

.....
(Signature of official taking proof)

.....
(Official title of official taking proof)

My commission expires.....
(Date of expiration of official's
commission)

(g) All deeds and other conveyances executed on or before April 12, 1974, by the president, any vice-president, assistant vice-president, manager, comptroller, treasurer, assistant treasurer, trust officer or assistant trust officer, or chairman or vice-chairman of a corporation are hereby validated to the extent that such deeds or other conveyances were otherwise properly executed, probated, and recorded."

Sec. 6. G.S. 45-42 reads as rewritten:

"§ 45-42. Release Satisfaction of corporate mortgages by corporate officers.

All mortgages and deeds in trust executed to a corporation may be satisfied and so marked of record as by law provided for the satisfaction of mortgages and deeds in trust, ~~by the president, any vice-president, assistant to the president, assistant vice-president, manager, credit manager, comptroller, cashier, assistant cashier, secretary, assistant secretary, treasurer, assistant treasurer, trust officer or assistant trust~~ any officer of such the corporation ~~signing the name of such corporation by him as such officer,~~ indicating the office held. For the purposes of recordation and cancellation, such signature shall be deemed to be a certification by the signer that he is an officer and is authorized to execute the satisfaction on behalf of such corporation. Where mortgages or deeds in trust were marked 'satisfied' on the records before the twenty-third day of February, 1909, by any president, secretary, treasurer or cashier of any corporation by such officer writing his own name and affixing thereto the title of his office in such corporation, such satisfaction is validated, and is as effective to all intents and purposes as if a deed of release duly executed by such corporation had been made, acknowledged and recorded."

Sec. 7. Sections 1 and 2 of this act are effective July 1, 1990, but shall not apply in any action or proceeding filed on or after July 1, 1990, and before the ratification of this act. The remainder of this act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

S.B. 792

CHAPTER 648

AN ACT TO REQUIRE MANDATORY COMMUNITY SERVICE
 FOR AN INITIAL CONVICTION OF MAKING FALSE BOMB
 REPORTS TO A HOSPITAL FACILITY OR USING A FALSE
 BOMB TO CREATE A SCARE IN A HOSPITAL FACILITY

AND TO PROVIDE THAT A SECOND OR SUBSEQUENT CONVICTION OF EITHER OFFENSE IS A CLASS I FELONY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-69.1 reads as rewritten:

" § 14-69.1. *Making a false report concerning destructive device.*

(a) If any person shall, by any means of communication to any person or group of persons, make a report, knowing or having reason to know the same to be false, that there is located in any building, house or other structure whatsoever or any vehicle, aircraft, vessel or boat any device designed to destroy or damage the building, house or structure or vehicle, aircraft, vessel or boat by explosion, blasting or burning, he shall be guilty of a misdemeanor, and shall, upon conviction, be fined or imprisoned or both in the discretion of the court.

(b) If any person shall, by any means of communication to any person or group of persons, make a report, knowing or having reason to know the same to be false, that there is located in any hospital facility as defined in G.S. 131E-6, which includes a health clinic facility, any device designed to destroy or damage the hospital or health clinic facility by explosion, blasting, or burning, he shall, upon a first conviction, be guilty of a misdemeanor, punishable by a minimum of 100 hours of mandatory community service. Upon a second or subsequent conviction under this subsection, he shall be guilty of a Class I felony and shall be fined or imprisoned or both in the discretion of the court."

Sec. 2. G.S. 14-69.2 reads as rewritten:

" § 14-69.2. *Perpetrating hoax by use of false bomb or other device.*

(a) If any person, with intent to perpetrate a hoax, shall secrete, place or display any device, machine, instrument or artifact, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property, he shall be guilty of a misdemeanor, and shall, upon conviction, be fined or imprisoned or both in the discretion of the court.

(b) A violation of subsection (a) of this section that occurs in a hospital facility as defined in G.S. 131E-6 is, upon a first conviction, a misdemeanor punishable by a minimum of 100 hours of mandatory community service. A second or subsequent conviction under subsection (a) of this section is a Class I felony."

Sec. 3. This act becomes effective October 1, 1991, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

AN ACT TO ESTABLISH A FEE FOR FEED TESTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-21.1 reads as rewritten:

" § 106-21.1. Feed Advisory Service; fee.

The Department of Agriculture shall ~~establish as a pilot program~~, operate a Feed Advisory Service for the analysis of animal feeds in order to provide a feeding management service to all animal producers in North Carolina. A fee of ten dollars (\$10.00) shall accompany each feed sample sent to the Department for testing. A fee of seventy-five dollars (\$75.00) shall accompany each feed sample which is to be tested for the presence of fumonisin."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

AN ACT TO AUTHORIZE LOCAL BOARDS OF HEALTH TO ADOPT BY REFERENCE RULES OF THE ENVIRONMENTAL MANAGEMENT COMMISSION CONCERNING WELLS OR TO ADOPT MORE STRINGENT RULES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-96 reads as rewritten:

" § 87-96. Conflict with other laws.

(a) The provisions of any law, rule, or local ordinance which establish standards affording greater protection to groundwater resources or public health, safety, or welfare shall prevail, within the jurisdiction to which they apply, over the provisions of this Article and rules adopted pursuant to this Article.

(b) Rules relating to public health, wells, or groundwater adopted by the Commission for Health Services shall prevail over this ~~Article or rules adopted pursuant to this Article~~. Article, rules adopted pursuant to this Article, and rules adopted by a local board of health pursuant to subsection (c) of this section. This Article shall not be construed to repeal any law or rule in effect as of July 1, 1989.

(c) A local board of health may adopt by reference rules adopted by the Environmental Management Commission pursuant to this Article, and may adopt more stringent rules when necessary to protect the public health."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.B. 54

CHAPTER 651

AN ACT TO MAKE CERTAIN TECHNICAL AMENDMENTS TO
THE STATUTES RELATING TO CREDIT UNIONS AND TO
INCREASE THE PENALTY FOR SUBMITTING LATE
REPORTS TO THE ADMINISTRATOR OF CREDIT UNIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 54 of the General Statutes is amended by adding a new section to Article 14A to read:

" § 54-109.7. Conducting business outside this State.

A credit union incorporated under this Subchapter may conduct business outside of this State in any state where it is permitted to conduct business as a credit union."

Sec. 2. G.S. 54-109.15 reads as rewritten:

" § 54-109.15. Reports.

(a) Credit unions organized under Articles 14A to 14L of this Chapter shall, in January and in July of each year, make a report of condition to the Administrator of Credit Unions on forms supplied by him for that purpose. Additional reports may be required.

(b) ~~Any such corporation which~~ credit union that neglects to make semiannual reports as provided in subsection (a) of this section, or any of the other reports required by the Administrator of Credit Unions at the time fixed by the Administrator, shall ~~forfeit~~ pay a late penalty to the Administrator of Credit Unions ~~five dollars (\$5.00) of seventy-five dollars (\$75.00) for each day such the neglect continues; and, furthermore, the continues.~~ five dollars (\$5.00) of seventy-five dollars (\$75.00) for each day such the neglect continues; ~~The Administrator of Credit Unions shall have authority, in his discretion, to may~~ revoke the certificate of incorporation and take possession of the assets and business of any corporation credit union failing to pay the fees required in a penalty imposed under this section after serving notice of at least 15 days upon such corporation of his intention so to do, the credit union of the proposed action. Penalties collected under this section shall be credited to the special account established under G.S. 54-109.14."

Sec. 3. G.S. 54-109.21 reads as rewritten:

" § 54-109.21. General powers.

A credit union may:

- (1) Make contracts;
- (2) Sue and be sued;
- (3) Adopt and use a common seal and alter ~~same;~~ the seal;

- (4) Acquire, lease, hold and dispose of property, either in whole or in part, necessary or incidental to its operations;
- (5) At the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;
- (6) Receive savings from its members in the form of shares, deposits, or special-purpose thrift accounts;
- (7) Lend its funds to its members as ~~hereinafter provided;~~ provided in Articles 14A to 14L of this Chapter;
- (8) Borrow from any source in accordance with policy established by the board of directors;
- (9) Discount and sell any eligible obligations, subject to rules ~~and regulations prescribed~~ adopted by the Administrator;
- (10) Sell all or substantially all of its assets or purchase all or substantially all of the assets of another financial institution, subject to the approval of the Administrator of Credit Unions;
- (11) Invest surplus funds as provided in Articles 14A to 14L of this Chapter;
- (12) Make deposits in legally chartered banks, savings ~~banks,~~ savings and loan associations institutions, trust companies and central-type credit union organizations;
- (13) Assess charges to members in accordance with the bylaws for failure to meet properly their obligations to the credit union;
- (14) Hold membership in other credit unions organized under Articles 14A to 14L of this Chapter or other acts, and in other associations and organizations composed of credit unions;
- (15) Declare dividends; pay interest on deposits and pay interest refunds to borrowers as provided in Articles 14A to 14L of this Chapter;
- (16) Sell travelers checks and money orders and charge a reasonable fee for such services, provided the ~~instruments~~ travelers checks are payable at institutions other than a credit union;
- (17) Perform ~~such~~ tasks and missions ~~as are~~ requested by the federal government or this State or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with Articles 14A to 14L of this Chapter;
- (18) Act as fiscal agent for and receive deposits from the federal government, this State, or any agency or political subdivision thereof;

- (19) Contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership subject to ~~such regulations as are prescribed~~ rules adopted by the Administrator;
- (20) Make donations or contributions to any civic, charitable or community organization as authorized by the board of directors, subject to such regulations as are prescribed by the Administrator;
- (21) Act as a custodian of qualified pension funds if permitted by federal law;
- (22) Purchase or make available insurance for its directors, officers, agents, employees, and members; and
- (23) Facilitate its members' purchase of goods and services in a manner which promotes the purposes of the credit union.
- (24) The board of directors may expel from the corporation any member who has not carried out ~~his the engagement the member made with the corporation, or has been convicted of a criminal offense~~ felony or crime involving moral turpitude, or neglects or refuses to comply with the provisions of this Article or of the ~~bylaws, or who habitually neglects to pay his debts, or shall become insolvent or bankrupt. The members at a regularly called meeting may expel from the corporation any member who has become intemperate or in any way financially irresponsible; no~~ bylaws. The Board may, after notice and hearing as provided in this subdivision, expel from the corporation any member who because of the member's intemperance disrupts the activities of the credit union or who because of the member's habitual neglect of financial obligations reflects discredit upon the credit union. No member shall be expelled until he has been informed in writing of the charges against him made and given an opportunity has been given him, opportunity, after reasonable notice, to be heard thereon, heard.
- (25) Engage in activity permitted under this ~~subsection, subdivision.~~ subdivision. Notwithstanding any other provision of this Chapter, the Administrator of Credit Unions, subject to the advice and consent of the Credit Union Commission, and upon a finding that action is necessary to preserve and protect the welfare of credit unions and to promote the general economy of the State, may adopt rules allowing State-chartered credit unions to engage in any activity in which they could engage if they were federally chartered credit unions.

- (26) Subject to rules ~~and regulations prescribed~~ adopted by the Administrator, act as trustee or custodian, and ~~may~~ receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized and forming a part of a deferred compensation plan for its members or groups or ~~organization organizations~~ of its members, provided the funds of ~~such the~~ plans are invested in savings or deposits of the credit union. All funds held may be commingled for ~~appropriate~~ the purpose of investment, but individual records shall be kept by the credit union for each participant and shall show in proper detail all transactions engaged in under authority of this ~~section, subdivision.~~

A member may withdraw from a credit union by filing a written notice of ~~his intention~~ intent to withdraw.

The amounts paid in on shares or deposits by an expelled or withdrawing member, with any dividends credited to ~~his the~~ shares and any interest accrued on ~~his the~~ deposits to the date of expulsion or withdrawal shall be paid to ~~such the~~ member, but in the order of expulsion or withdrawal, and only as funds therefor become available, after deducting any amounts due to the ~~corporation by such credit union by the member.~~ The member shall have no other or further right in the credit union or to any of its benefits, but ~~such the~~ expulsion or withdrawal shall not operate to relieve the member from any remaining liability to the ~~corporation, credit union."~~

Sec. 4. G.S. 54-109.82 reads as rewritten:

" § 54-109.82. *Investment of funds.*

The capital, deposits, undivided profits and reserve fund of the corporation may be invested only in any of the following ~~ways, and in such ways only;~~ ways:

- (1) They may be lent to the members of the corporation in accordance with the provisions of this Chapter.
- (2) In capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association, or membership corporation, provided the membership or stockholdings, as the case may be, of ~~such the~~ agency or association are confined or restricted to credit unions or organizations of credit unions, or provided the ~~purposes~~ purpose for which ~~such the~~ agency or association is organized or designed is to service or otherwise assist credit union operations.
- (3) In obligations of the State of North Carolina or any subdivision thereof.

- (4) In obligations of the United States, including bonds and securities upon which payment of principal and interest is fully guaranteed by the United States.
- (5) They may be deposited to the credit of the corporation in savings ~~banks, institutions, credit unions, savings and loan associations,~~ or State banks or trust companies incorporated under the laws of the State, or in national banks located ~~therein,~~ in the State.
- (6) In loans to other credit unions in any amount not to exceed twenty-five percent (25%) of the shares and unimpaired surplus of the lending credit union.
- (7) In an aggregate amount not to exceed twenty-five percent (25%) of the allocations to the reserve fund in any agency or association of the type described in subdivision (2) ~~hereof,~~ of this section provided the purposes of the agency or association are designed to assist in establishing and maintaining liquidity, solvency, and security in credit union operations.
- (8) In the North Carolina Savings Guaranty Corporation.
- (9) In any form of investment allowed by law to the State Treasurer under G.S. 147-69.1.
- (10) Debentures ~~which are~~ issued by an agency of the United States government.
- (11) In the College Foundation in any amount not to exceed ten percent (10%) of the shares and unimpaired surplus of the investing credit union.
- (12) They may be ~~placed on time deposits deposited in any banks bank insured by the Federal Deposit Insurance Corporation or may be deposited or may be invested in any savings or building and loan association institution insured by the Federal Savings and Loan Insurance Corporation~~ federal government or any of its agencies."

Sec. 5. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.B. 86

CHAPTER 652

AN ACT TO AUTHORIZE CITIES AND COUNTIES TO IMPOSE AN AVAILABILITY FEE FOR SOLID WASTE DISPOSAL FACILITIES AND TO BILL AND COLLECT THE FEE IN THE SAME MANNER AS PROPERTY TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-292 reads as rewritten:

" § 153A-292. County collection and disposal; tax levy, disposal facilities.

(a) The board of county commissioners of any county ~~is hereby empowered to~~ may establish and operate ~~garbage, refuse, and solid waste collection and disposal facilities, or either, facilities~~ in areas outside of incorporated cities and towns where, in its opinion, ~~the need for such facilities exists.~~ the corporate limits of a city. The board may by ordinance regulate the use of ~~such garbage, refuse, and solid waste a disposal facilities; facility~~ provided by the county, the nature of the solid wastes disposed of ~~therein; in a facility,~~ and the method of disposal. ~~Ordinances so adopted may be enforced by any law-enforcement officer having jurisdiction, which shall include, but not be limited to, officers of the county sheriff's department, county police department and the State Highway Patrol.~~ The board may contract with any ~~municipality, city,~~ individual, or privately owned corporation ~~to collect and dispose, or collect or dispose, of garbage, refuse, and solid waste in any such area, to collect and dispose of solid waste in the area.~~ No county shall levy a fee for the disposal of solid waste upon any municipality located in that county or upon any contractor or resident of any such municipality unless such disposal fee is based on a schedule which applies uniformly throughout the county. ~~In the disposal of garbage, refuse, and solid waste, the board may use any vacant land owned by the county, or it may acquire suitable sites for such purpose. The board may make appropriations to carry out the activities herein authorized. The board may impose fees for the use of disposal facilities, and in the event it shall provide for the collection of garbage, refuse, and solid waste, it may charge fees for such collection service sufficient in its opinion to defray the expense of collection.~~ Counties and municipalities therein are authorized to cities may establish and operate joint collection and disposal facilities, ~~or either of these, upon such terms as the governing bodies may determine, facilities.~~ Such A joint agreement shall be in writing and executed by the governing body ~~bodies~~ of the participating units of local government.

(b) ~~The board of commissioners of each county is hereby authorized to levy taxes for the special purpose of carrying out the authority conferred by this section, in addition to the rate of tax allowed by the Constitution for general purposes, and the General Assembly hereby gives its special approval for such tax levies.~~ The board of county commissioners may impose a fee for the collection of solid waste. The fee may not exceed the costs of collection.

The board of county commissioners may impose a fee for the use of a disposal facility provided by the county. The fee for use may not

exceed the cost of operating the facility and may be imposed only on those who use the facility. A county may not impose a fee for the use of a disposal facility on a city located in the county or a contractor or resident of the city unless the fee is based on a schedule that applies uniformly throughout the county.

The board of county commissioners may impose a fee for the availability of a disposal facility provided by the county. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the county that benefits from the availability of the facility. A county may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the county. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor is not considered to benefit from a disposal facility provided by the county and is not subject to a fee imposed by the county for the availability of a disposal facility provided by the county.

In determining the costs of providing and operating a disposal facility, a county may consider solid waste management costs incidental to a county's handling and disposal of solid waste at its disposal facility, including the costs of the methods of solid waste management specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of 1989. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the county.

(c) The board of county commissioners may use any suitable vacant land owned by the county, and county for the site of a disposal facility, subject to the permit requirements of Article 9 of Chapter 130A of the General Statutes. If the county does not own suitable vacant land for a disposal facility, it may acquire suitable land by purchase or condemnation suitable land for the disposal sites, and in the event condemnation of said lands is necessary, the procedure used shall be that set forth in Chapter 40A of the North Carolina General Statutes, condemnation. The board may erect a gate across a highway that leads directly to a disposal facility operated by the county. The gate may be erected at or in close proximity to the boundary of the disposal facility. The county shall pay the cost of erecting and maintaining the gate.

(d) The board may impose fees for the use of the disposal site, and if the county provides for collection services, it shall charge fees sufficient to defray the expense of collection.

~~(e) The board of commissioners of each county is authorized to levy taxes for the special purpose of carrying out the authority conferred by this section, in addition to the rate of tax allowed by the Constitution for general purposes, and the General Assembly hereby gives its special approval for such tax levies. The board of commissioners is authorized to make appropriations from these tax funds, and from nonrevenue funds which may be available. Provided that the county board of commissioners may authorize the erection of a gate across a State or county maintained highway leading directly to a sanitary landfill or garbage disposal site which is operated by the county. The gate may be erected at or in close proximity to the boundary of the landfill or garbage disposal site. The cost of the erection of the gate and its maintenance is to be borne by the county, and the gate shall be closed upon authority of the county commissioners."~~

Sec. 2. G.S. 153A-293 reads as rewritten:

"§ 153A-293. Collection of fees in certain counties for solid waste disposal facilities and solid waste collection services.

~~(a) A county may provide that adopt an ordinance providing that any fee imposed under G.S. 153A-292 may be billed with the ad valorem property taxes, may be payable in the same manner as ad valorem property taxes, and, in the case of nonpayment, may result in the imposition of a lien on the property owner's real property in the same manner as ad valorem taxes, be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee.~~

~~(b) This section applies to Alleghany, Anson, Ashe, Burke, Caswell, Cleveland, Duplin, Gaston, Lee, Lenoir, Montgomery, Polk, Richmond, Robeson, Transylvania, Washington, Watauga, and Wayne Counties only."~~

Sec. 3. G.S. 153A-299.2 reads as rewritten:

"§ 153A-299.2. Solid waste defined.

As used in this ~~Part~~, Article, the term 'solid waste' shall include but not be limited to trash, debris, garbage, litter, discarded cans or receptacles or any other type of waste or garbage material whatsoever."

Sec. 4. G.S. 160A-314(c) reads as rewritten:

"(c) Except as provided in subsection (d), (d) and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served."

Sec. 5. Chapter 160A of the General Statutes is amended by adding a new section to read:

" § 160A-314.1. Availability fees for solid waste disposal facilities; collection of any solid waste fees.

(a) In addition to a fee that a city may impose for collecting solid waste or for using a disposal facility, a city may impose a fee for the availability of a disposal facility provided by the city. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the city that benefits from the availability of the facility. A city may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the city. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor is not considered to benefit from a disposal facility provided by the city and is not subject to a fee imposed by the city for the availability of a disposal facility provided by the city.

In determining the costs of providing and operating a disposal facility, a city may consider solid waste management costs incidental to a city's handling and disposal of solid waste at its disposal facility. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the city.

(b) A city may adopt an ordinance providing that any fee imposed under subsection (a) or under G.S. 160A-314 for collecting or disposing of solid waste may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee."

Sec. 6. Chapters 591, 905, 938, 940, 974, 1007, and 1017 of the 1989 Session Laws are repealed. An ordinance adopted under a local act that is repealed by this act is considered to have been adopted under G.S. 153A-293, as amended by this act.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.B. 301

CHAPTER 653

AN ACT TO AMEND THE CEMETERY ACT AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 65-54 reads as rewritten:

" § 65-54. *Annual budget of Commission; collection of funds.*

The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from yearly fees and from any other sources provided in this Article. On or before July 1 of each year, each licensed cemetery ~~will shall~~ pay a license fee to be set by the Commission in an amount not to exceed three hundred dollars ~~(\$300.00) per year; and in (\$300.00).~~ In addition, each licensed cemetery shall pay to the Commission an inspection fee for each grave space, niche, or mausoleum crypt ~~deeded~~ sold and ~~preneed cemetery merchandise contract for vaults, belowground crypts, mausoleum crypts, and memorials to be set by the Commission each year in order to defray the expenses of the Commission as set forth in the budget.~~ Such additional shall pay a fee for each vault, niche, belowground crypt, mausoleum crypt, memorial, or opening and closing of a grave space that is included in a preneed cemetery contract. The inspection fee shall for each grave space, niche, or mausoleum crypt is payable when the item is sold and may not exceed one dollar and fifty cents (\$1.50) per grave space, niche, and mausoleum crypt ~~deeded, and shall not exceed four dollars (\$4.00) per item in each preneed cemetery merchandise contract for vaults, belowground crypts, mausoleum crypts and memorials, two dollars (\$2.00).~~ The fee for each of the listed items that are included in a preneed cemetery contract is payable when the contract is made and may not exceed five dollars (\$5.00)."

Sec. 2. G.S. 65-55(c) reads as rewritten:

"(c) Upon receipt of the application and filing fee of ~~four hundred dollars (\$400.00), eight hundred dollars (\$800.00),~~ the Commission shall cause an investigation to be made to establish the following criteria for approval of ~~such~~ the application:

- (1) The creation of a legal entity to conduct cemetery business, and ~~the~~ its proposed financial structure.
- (2) A perpetual care trust fund agreement, with an initial deposit of not less than ~~thirty thousand dollars (\$30,000)~~ fifty thousand dollars (\$50,000) and with a bank cashier's check or certified check attached for ~~such~~ the amount and made payable to such trustee, with said trust the trustee. The trust fund agreement must be executed by the applicant and applicant, accepted by the trustee, and conditioned only upon whether the application is approved, approval of the application.
- (3) A plat of the land to be used for ~~a cemetery, showing county, city and/or township, and names of roads and access~~

- ~~streets or ways, the cemetery, showing the location of the cemetery and the access roads to the cemetery.~~
- (4) Designation by the legal entity wishing to establish a cemetery of a general ~~manager who shall~~ manager. The general manager must be a person of good moral ~~character, having had no less than~~ character and have at least one year's experience in cemeteries.
 - (5) Development plans sufficient to ~~insure~~ ensure the community that the cemetery will provide adequate cemetery ~~services, and services and that~~ services and that the property is suitable for use as a cemetery."

Sec. 3. G.S. 65-53(2) reads as rewritten:

- "(2) ~~Prior to the change of control of any cemetery company, an examination of the licensee's records may be required, and if so, the fees provided in subdivision (3) hereof would apply thereto. To examine a cemetery company's records when a person applies for a change of control of the company.~~

Sec. 4. G.S. 65-59 reads as rewritten:

" § 65-59. *Application for a change of control: filing fee.*

~~In any case where a person, a group of persons, or a corporation A person who proposes to purchase or acquire control of an existing cemetery company either company, whether by purchasing the outstanding capital stock of any cemetery company, or the interest of the owner or owners, the company, purchasing an owner's interest in the company, or otherwise act acting to effectively change the control of said cemetery company, such person the company, shall first make application on a form supplied by the Commission for a certificate of approval of such the proposed change of control of said cemetery company, control. The application shall contain the name and address of the each proposed new owners and the said owner. The Commission shall issue said a certificate of approval only after it has become satisfied determines that the proposed new owners are qualified by character, experience experience, and financial responsibility to control and operate the said cemetery company in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in ownership and management. Such control. An application for a purchase or approval of a change of control must be completed and accompanied by an initial a filing fee of one hundred dollars (\$100.00) to cover examination provided in G.S. 65-53(2) if required, and if records are in order, certificate of approval shall be issued, two hundred dollars (\$200.00)."~~

Sec. 5. G.S. 65-63 reads as rewritten:

" § 65-63. *Requirements for perpetual care fund.*

~~No such A cemetery shall hereafter company may not cause or permit advertising of a perpetual care fund in connection with the sale or offer for sale of its property unless the amount deposited in said funds shall be equal to not less than thirty five dollars (\$35.00) the fund is at least forty dollars (\$40.00) per grave space, niche, or mausoleum crypt sold, this sum to be deposited in perpetual care fund as provided in G.S. 65-61 except as provided in G.S. 65-64, sold.~~ Nothing may prohibit an individual cemetery from requiring a perpetual care deposit for grave memorial markers to be deposited in the perpetual care fund so long as the same assessment is uniformly applied to all grave memorial markers installed in such the cemetery."

Sec. 6. G.S. 65-64(e) reads as rewritten:

"(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery ~~heretofore or hereafter established company~~ shall amount to one hundred fifty thousand dollars (\$150,000), anything in this Article to the contrary notwithstanding, the cemetery ~~company~~ may make all deposits thereafter either into the original perpetual care trust fund or into a separate fund ~~which shall be established as an irrevocable trust and trust,~~ designated as Perpetual Care Trust Fund 'A' 'A,' and invested by the trustee as directed by the ~~cemetery, but company.~~ Funds in a trust fund designated as Trust Fund 'A' may not be invested in another ~~cemetery, and such deposits shall be not less than thirty five dollars (\$35.00) per grave space, niche, mausoleum crypt space, cemetery company and are subject to the requirements of funds deposited in the original perpetual care trust fund.~~"

Sec. 7. G.S. 65-66(j) is repealed.

Sec. 8. G.S. 65-69(d) reads as rewritten:

"(d) The provisions of subsections (a) and (b) relating to a requirement for minimum acreage shall not apply to those cemeteries licensed by the Commission on or before July 1, 1967, which own or control a total of less than 30 acres of land; provided that such cemeteries shall not dispose of any of such lands. A nongovernment lien or other interest in land acquired in violation of this section is void."

Sec. 9. G.S. 65-71 reads as rewritten:

" § 65-71. *Penalties.*

(a) ~~A Except as provided in this subsection, a person violating any provisions of this Article, or of any order or rule promulgated under the provisions thereof, this Article, or of any license issued by the Commission, shall be Commission is guilty of a misdemeanor and shall be fined and fined, imprisoned, or both, in the discretion of the court. Each failure to deposit funds in a trust fund in accordance with~~

this Article is a separate offense. A person who has failed to deposit funds in a trust fund in accordance with this Article and whose delinquent deposits equal or exceed twenty thousand dollars (\$20,000) is guilty of a Class J felony.

(b) The officers and directors or persons occupying similar status or performing similar functions of any cemetery company, cemetery sales organization, cemetery management organization or cemetery broker, as defined in this Chapter, failing to make required contributions to the care and maintenance trust fund and any other trust fund of or escrow account ~~provided herein~~, shall be ~~guilty of a misdemeanor~~, ~~liable for any offense based on the failure and upon conviction thereof for the offense shall be punished in the manner prescribed by law."~~

Sec. 10. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.B. 402

CHAPTER 654

AN ACT TO PERMIT THE DIVISION OF MOTOR VEHICLES TO CORRECT ITS RECORDS USING FORWARDING ADDRESSES FURNISHED BY THE POSTAL SERVICE AND TO REQUIRE MOTOR VEHICLE EXHAUST SYSTEMS TO BE INSPECTED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-39 is amended by adding a new subsection to read:

"(i) Notwithstanding the requirements of G.S. 20-7.1 and G.S. 20-67(a), the Commissioner may correct the address records of drivers license and registration plate holders as shown in the files of the Division to that shown on notices and renewal cards returned to the Division with new addresses provided by the United States Postal Service."

Sec. 2. G.S. 20-183.3(a) reads as rewritten:

"(a) Before an approval certificate may be issued for a motor vehicle, the vehicle must be inspected by a safety equipment inspection station, and if required by Chapter 20 of the General Statutes of North Carolina, must be found to possess in safe operating condition the following articles and equipment:

- (1) Brakes,
- (2) Lights,
- (3) Horn,
- (4) Steering mechanism,
- (5) Windshield wiper,
- (6) Directional signals,

- (7) Tires,
- (8) Rearview mirror or ~~mirrors,~~ mirrors,
- (9) Exhaust system.

No inspection certificate shall be issued by a safety equipment inspection station for a motor vehicle manufactured after model year 1967 unless the vehicle is equipped with such emission control devices to reduce air pollution as were installed at the time of manufacture which are readily visible, provided the foregoing requirements shall not apply where such devices have been removed for the purpose of converting the motor vehicle to operate on natural or liquified petroleum gas. Other modifications of emission control devices shall be approved by the Environmental Management Commission before an inspection certification is issued.

~~In addition to the items listed above, safety inspection equipment stations shall inspect the exhaust systems of all vehicles inspected and report the condition of each exhaust system to the owners or to the persons offering the vehicles for inspection.~~

The inspection requirements herein provided for shall not exceed the standards provided in the current General Statutes for such equipment."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.B. 425

CHAPTER 655

AN ACT TO ENCOURAGE HEALTH CARE PERSONNEL TO PROVIDE VOLUNTEER MEDICAL SERVICES AT LOCAL HEALTH DEPARTMENTS AND NONPROFIT COMMUNITY HEALTH CENTERS BY PROVIDING FOR LIMITED TORT LIABILITY PROTECTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-21.14 reads as rewritten:

"§ 90-21.14. *First aid or emergency treatment; liability limitation.*

(a) Any person, including a volunteer medical or health care provider at a facility of a local health department as defined in G.S. 130A-2 or at a non-profit community health center or a volunteer member of a rescue squad, who receives no compensation for his services as an emergency medical care provider, who renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,

- (1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and

- (2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person,

shall not be liable for damages for injuries alleged to have been sustained by the person or for damages for the death of the person alleged to have occurred by reason of an act or omission in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment.

(a1) Any volunteer medical or health care provider at a facility of a local health department or at a nonprofit community health center who receives no compensation for medical services rendered at the facility or center shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the rendering of the services unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the person rendering the services. The local health department facility or nonprofit community health center shall use due care in the selection of volunteer medical or health care providers, and this subsection shall not excuse the health department facility or community health center for the failure of the volunteer medical or health care provider to use ordinary care in the provision of medical services to its patients.

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person while rendering health care services in the normal and ordinary course of his business or profession. Services provided by a volunteer health care provider who receives no compensation for his services and who renders first aid or emergency treatment to members of athletic teams are deemed not to be in the normal and ordinary course of the volunteer health care provider's business or profession. Services provided by a medical or health care provider who receives no compensation for his services and who voluntarily renders ~~treatment~~ such services at facilities of local health departments as defined in G.S. 130A-2 or at a non-profit community health center, are deemed not to be in the normal and ordinary course of the volunteer medical or health care provider's business or profession.

(c) In the event of any conflict between the provisions of this section and those of G.S. 20-166(d), the provisions of G.S. 20-166(d) shall control and continue in full force and effect."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.B. 452

CHAPTER 656

AN ACT TO REMOVE THE SUNSET ON ANNUAL FEES CHARGED BY THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO SUPPORT PUBLIC HEALTH PROGRAMS, AND TO EXEMPT NUTRITION PROGRAMS FOR THE ELDERLY FROM SUCH FEES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 1064 of the 1989 Session Laws is amended by inserting a period after the word "ratification" and deleting the words "and shall expire on June 30, 1992".

Sec. 2. G.S. 130A-248(d) reads as rewritten:

"(d) ~~(Expires June 30, 1992)~~ The Department shall charge each facility subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Human Resources and public school cafeterias, an annual fee of twenty-five dollars (\$25.00). The Department shall charge an additional twenty-five dollar (\$25.00) late payment fee to any facility that fails to pay the required fee within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend or revoke the permit of a facility that fails to pay the required fee within 60 days after billing by the Department. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be credited to the General Fund and may be used to support State and local public health programs and ~~activities~~. activities; provided that not more than thirty-three and one-third percent (33 - 1/3%) of the fees collected may be used to support State health programs and activities. The Department shall make an annual report to the Joint Legislative Commission on Governmental Operations and the Director of the Fiscal Research Division that shall include the fees collected and disbursed under this subsection and any other information requested by the General Assembly or the Commission."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.B. 491

CHAPTER 657

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA AND THE UNIVERSITY OF NORTH CAROLINA HOSPITALS AT CHAPEL HILL.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is to authorize construction, by certain constituent institutions of The University of North Carolina and the University of North Carolina Hospitals at Chapel Hill, of the capital improvements projects listed herein for each institution, and to authorize the financing of these said capital improvements projects with funds available to the institutions and the Hospitals from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of such funds, but not including funds appropriated from the General Fund of the State.

Sec. 2. The projects hereby authorized to be constructed and financed as provided in Section 1 of this act are as follows:

- | | |
|--|------------|
| (1) East Carolina University | |
| a. Old Cafeteria Renovation | 5,124.300 |
| (2) North Carolina A & T State University | |
| a. Renovation of Five Residence Halls | 6,915.900 |
| (3) North Carolina State University at Raleigh | |
| a. Campus Wide Telecommunications System | 4,893.200 |
| (4) The University of North Carolina | |
| at Chapel Hill - | |
| Academic Affairs | |
| a. Renovations to the Carolina Inn | 9,124.200 |
| b. Parking Deck for New School of | |
| Business Administration | 5,239.300 |
| c. Additions and Renovations - Van Hecke - | |
| Wettach Building | 8,788.300 |
| (5) The University of North Carolina | |
| at Chapel Hill - | |
| Health Affairs | |
| a. Health Affairs Parking Deck | |
| Number Two | 13,940.500 |
| (6) The University of North Carolina | |
| at Greensboro | |
| a. Central Campus Parking Structure | 7,511.700 |
| (7) The University of North Carolina Hospitals | |

at Chapel Hill

a. Chiller Plant

3,849,500

Sec. 3. At the request of The University of North Carolina Board of Governors and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the scope of or a change in the method of funding for any project authorized by this act. In making a determination of whether to authorize a change in scope or funding, the Director of the Budget may consult with the Advisory Budget Commission. In no event may appropriations from the General Fund be used for a project authorized by this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.B. 673

CHAPTER 658

AN ACT TO LIMIT TO NURSE ANESTHETISTS THE EXEMPTION FROM THE DEFINITION OF THE PRACTICE OF DENTISTRY FOR THE ADMINISTRATION OF ANESTHESIA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-29(b)(6) reads as rewritten:

"(6) Administers an anesthetic of any kind in the treatment of dental or oral diseases or physical conditions, or in preparation for or incident to any operation within the oral cavity; provided, however, that this subsection shall not apply to a lawfully qualified nurse or anesthetist who administers such anesthetic under the supervision and direction of a licensed dentist or physician;"

Sec. 2. This act becomes effective July 1, 1992.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.B. 684

CHAPTER 659

AN ACT TO AUTHORIZE CERTAIN CITIES AND COUNTIES TO TAKE INTO CONSIDERATION PROSPECTIVE REVENUES GENERATED BY THE DEVELOPMENT IN ARRIVING AT THE AMOUNT OF CONSIDERATION FOR AN ECONOMIC DEVELOPMENT CONVEYANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 158-7.1(d) reads as rewritten:

"(d) A county or city may lease or convey interests in real property held or acquired pursuant to subsection (b) of this section in accordance with the procedures of this subsection (d). A county or city may convey or lease interests in property by private negotiation and may subject the property to such covenants, conditions, and restrictions as the county or city deems to be in the public interest or necessary to carry out the purposes of this section. Any such conveyance or lease must be approved by the county or city governing body, after a public hearing. The county or city shall publish notice of the public hearing at least 10 days before the hearing is held; the notice shall describe the interest to be conveyed or leased, the value of the interest, the proposed consideration for the conveyance or lease, and the governing body's intention to approve the conveyance or lease. Before such an interest may be conveyed, the county or city governing body shall determine the fair market value of the interest, subject to whatever covenants, conditions, and restrictions the county or city proposes to subject it to; the consideration for the conveyance may not be less than the value so determined. In arriving at the amount of consideration that it receives, the Board may take into account prospective tax revenues from improvements to be constructed on the property, prospective sales tax revenues to be generated in the area, as well as any other prospective tax revenues or income coming to the county or city over the next 10 years as a result of the conveyance or lease provided the following conditions are met:

- (1) The governing board of the county or city shall determine that the conveyance of the property will stimulate the local economy, promote business, and result in the creation of a substantial number of jobs in the county or city.
- (2) The governing board of the county or city shall contractually bind the purchaser of the property to construct improvements on the property within a specified period of time, not to exceed 10 years, which improvements are sufficient to generate the tax revenue taken into account in arriving at the consideration. Upon failure to construct the improvements specified in the contract, the purchaser shall reconvey the property back to the county or city."

Sec. 2. This act applies to the Cities of Concord, Kannapolis, Mooresville, St. Pauls, Selma, Smithfield, Statesville, Troutman, and Winston-Salem, and the Counties of Cabarrus, Forsyth, Iredell, and Johnston.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

AN ACT TO AUTHORIZE THE CITY OF DUNN TO IMPOSE FACILITY FEES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 818 of the 1969 Session Laws, as amended by Chapter 104 of the 1971 Session Laws, being the revised and consolidated Charter of the City of Dunn, is amended by adding a new Article to read:

"ARTICLE XIV. FACILITIES FEES.

"Sec. 14.1. Definitions. The following definitions apply in this act:

- (1) 'Capital costs' means costs spent for developing community service facilities. Capital costs are limited to capital outlay items listed in the 'Uniform Local Government Accounting Systems' procedural manual prepared by the North Carolina Local Government Commission.
- (2) 'Community service facilities' means the following public facilities or improvements provided or established by the local government or in conjunction with other units of government: streets and sidewalks, water, sewer and drainage projects, parks, open spaces, and recreational facilities and any other capital costs needs of duly constituted departments of city government.
- (3) 'Developer' means an individual, corporation, partnership, organization, association, firm, political subdivision, or other legal entity constructing or creating new construction.
- (4) 'Facility fee' means the charge imposed upon new construction under this Article.
- (5) 'New construction' means any new development, construction, or installation for which a building or zoning permit, certification, or any other type of governmental approval is required. New construction includes the installation of a mobile home, factory-built, or modular housing. New construction does not include: (i) renovation and repair of existing structures, accessory uses and their structures, or additions, unless the renovations, repairs or additions, will cause an increase in off-street parking requirements or a change in occupancy as occupancy is defined by the North Carolina State Building Code; (ii) fences, billboards, poles, pipelines, transmission lines, advertising signs or similar structures that do not generate a need for community facilities.

"Sec. 14.2. The City of Dunn may impose facility fees upon all new construction within the City's corporate limits and within its extraterritorial jurisdiction for the purpose of placing an equitable share of the cost of providing new community service facilities upon developers and inhabitants of newly developed areas. This Article provides the City with the legal mechanism for imposing facility fees to recover capital costs associated with community service facilities necessitated by rapid and continued growth in the Dunn area. A facility fee ordinance adopted under this Article shall be designed to maintain the level of service presently available within the City.

"Sec. 14.3. (a) The amount of each facility fee imposed shall be uniform and based upon the capital costs to be incurred by the City as a result of the new construction. In establishing the facilities fees, the City shall establish zones within which the costs of providing community service facilities are estimated. Zones may have different facility fees, depending upon the community service facilities available and the extent to which capital costs have been paid in each zone. Facilities upon which fees are based must directly result in additional capital costs, and fees must be expended within the same zone as or otherwise benefit the new construction upon which the fee is imposed. A public hearing shall be held before the zones authorized in this subdivision are established.

(b) The amount of each facility fee shall be based upon documented needs, and specific classifications and rates that shall be uniformly applied. Classifications upon which fees are based must account for the costs and extent of additional burden placed upon community service facilities by different types and sizes of new construction.

(c) Before imposing a facility fee, the City shall prepare or have prepared a report containing:

- (1) A description of the anticipated capital cost to the City of each additional or expanded community service facility necessitated by the new construction;
- (2) A description of the characteristics of the new construction that necessitate the additional or expanded community service facility, such as, population, trip generation, stormwater runoff and flow characteristics; and
- (3) A plan for providing the community service facilities necessitated by the new construction.

"Sec. 14.4. The City may enact regulations as it deems necessary to implement this Article. Before adopting or amending any ordinance authorized by this Article, the City shall hold a public hearing on the ordinance. Notice of any public hearing required under this Article shall be given in accordance with G.S. 160A-364.

"Sec. 14.5. Funds for each community service facility for which a facility fee is collected shall be placed in a separate trust fund. Separate trust funds shall be established for separate zones. All funds shall be expended for the facility for which they were collected. Payment of facility fees does not entitle the payor to any greater right to use or ownership in the facility for which the fee is collected than is shared by the general public.

"Sec. 14.6. The authority provided in this Article is in addition to all other authority provided by law. Assessments and fees authorized by law are not affected by this Article.

"Sec. 14.7. A developer who wishes to challenge a facility fee shall pay the amount charged by the City, clearly identify that payment is made under protest, and give notice of appeal within 30 days after the date that payment under protest is made. The notice required by this section shall be delivered to the city manager by personal service or registered or certified mail, return receipt requested. The City Council shall hold a public hearing to review the appeal within 35 days after receiving the notice of appeal. The decision of the City Council on the appeal is subject to review by the Harnett County Superior Court in the nature of *certiorari*. A petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after the date that the City Council delivers its decision in writing, either by personal service, or registered or certified mail, return receipt requested, to the appealing party."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.B. 890

CHAPTER 661

AN ACT TO ESTABLISH A NEWBORN SCREENING PROGRAM
WITHIN THE DEPARTMENT OF ENVIRONMENT, HEALTH,
AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 130A of the General Statutes is amended by adding the following new section to read:

"§ 130A-125. Screening of newborns for metabolic and other hereditary and congenital disorders.

(a) The Department shall establish and administer a Newborn Screening Program. The program shall include, but shall not be limited to:

(1) Development and distribution of educational materials regarding the availability and benefits of newborn screening.

- (2) Provision of laboratory testing.
- (3) Development of follow-up protocols to assure early treatment for identified children, and the provision of genetic counseling and support services for the families of identified children.
- (4) Provision of necessary dietary treatment products or medications for identified children as medically indicated and when not otherwise available.

(b) The Commission shall adopt rules necessary to implement the Newborn Screening Program. The rules shall include, but shall not be limited to, the conditions for which screening shall be required, provided that screening shall not be required when the parents or the guardian of the infant object to such screening. If the parents or guardian object to the screening, the objection shall be presented in writing to the physician or other person responsible for administering the test, who shall place the written objection in the infant's medical record.

(c) The Department is authorized to establish and collect a reasonable fee for laboratory tests performed pursuant to this section by the State Public Health Laboratory. Such fees shall be based on the actual cost of performing the tests. All fees collected by the Department shall be used to supplement and not supplant funds appropriated for the Newborn Screening Program. Fees collected by the Department pursuant to this section shall not revert to the General Fund at the end of each fiscal year, but shall remain in the Department to be used to support the Newborn Screening Program, subject to appropriation by the General Assembly."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.B. 904

CHAPTER 662

AN ACT TO REGULATE THE SALE OF MOTOR VEHICLES BY MOTOR VEHICLE DEALERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-286, as amended by Section 1 of Chapter 527 of the 1991 Session Laws, reads as rewritten:

" § 20-286. *Definitions.*

~~Unless the context otherwise requires, the following words and terms, for the purpose of this Article, shall have the following meanings:~~ The following definitions apply in this Article:

- (1), (2) Repealed by Session Laws 1973, c. 1330, s. 39.

- (2a) "Dealership facilities" means the Dealership facilities. -- The real estate, buildings, fixtures and improvements which have been devoted to the conduct of business under the franchise by the new motor vehicle dealer, a franchise.
- (2b) "Designated family member" means the Designated family member. -- The spouse, child, grandchild, parent, brother, or sister of a dealer, who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who under the laws of intestate succession of this State is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer.
- (3) "Distributor" and "wholesaler" mean a Distributor. -- A person, resident or nonresident of this State, who sells or distributes new motor vehicles to new motor vehicle dealers in this State, or who maintains a distributor representative in this State, or who controls any person, firm, association, corporation or trust, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to any motor vehicle dealer in this State.
- (4) "Distributor branch" means a Distributor branch. -- A branch office maintained by a distributor or wholesaler, distributor for the sale of new motor vehicles to new motor vehicle dealers, or for directing or supervising its the distributor's representatives in this State.
- (5) "Distributor representative" means a Distributor representative. -- A person employed by a distributor or wholesaler, or by a distributor branch, branch for the purpose of making selling or promoting the sale of new motor vehicles dealt in by it, or for supervising or contacting its dealers, prospective dealers, or representatives in this State, vehicles or otherwise conducting the business of the distributor or distributor branch.
- (5a) Established office. -- An office that meets the following requirements:

- a. Contains at least 96 square feet of floor space in a permanent enclosed building.
 - b. Is a place where the books, records, and files required by the Division under this Article are kept.
- (6) 'Established place of business' means a Established salesroom. -- A salesroom that meets the following requirements:
- a. containing ~~Contains~~ Contains at least 96 square feet of floor space in a permanent enclosed building; said salesroom shall have displayed thereon or building.
 - b. Displays, or is located immediately adjacent thereto a sign, in to, a sign having block letters not less than three inches in height on contrasting background, clearly and distinctly designating the trade name of the business business.
 - c. Is a place at which a permanent business of bartering, trading trading, and selling motor vehicles will be carried on as such in good faith on an ongoing basis whereby the dealer can be contacted by the public at reasonable times.
 - d. and at which place of business shall be kept and maintained Is a place where the books, records records, and files as required by the Division may require necessary to conduct the business at such place, under this Article are kept.

The term includes the area contiguous to or located within 500 feet of the premises on which the salesroom is located. The term does not include a tent, a temporary stand, or other temporary quarters. Provided, however, the The minimum area requirement provided for in this subdivision is not applicable does not apply to any established place of business lawfully in existence and duly licensed on or before January 1, 1978.

- (7) "Factory branch" means a Factory branch. -- A branch office, maintained for the sale of new motor vehicles to new motor vehicle dealers, or for directing or supervising its the factory branch's representatives in this State.
- (8) "Factory representative" means a Factory representative. -- A person employed by a person who manufactures or assembles motor vehicles, or by a factory branch, manufacturer or a factory branch for the purpose of making selling or promoting the sale of its the manufacturer's motor vehicles, or for supervising or contacting its dealers, prospective dealers or

- ~~representatives in this State, vehicles or otherwise conducting the business of the manufacturer or factory branch.~~
- (8a) ~~"Franchise" means the~~ Franchise. -- A written agreement or contract between any new motor vehicle manufacturer, and any new motor vehicle dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract, and pursuant to which the dealer purchases and resells the franchised product or leases or rents the dealership premises.
- (8b) ~~"Good faith" seems honest~~ Good faith. -- Honest in fact and the observation of reasonable commercial standards of fair dealing in the trade as defined and interpreted in G.S. 25-2-103(1)(b).
- (8c) ~~"Manufacturer" means any~~ Manufacturer. -- A person, resident or nonresident, who manufactures or assembles motor vehicles, or who imports new motor vehicles for distribution through distributors of motor vehicles, a distributor, including any person, partnership, or corporation which person who acts for and is under the control of such the manufacturer or assembler in connection with the distribution of said the motor vehicles. Additionally, the term 'manufacturer' shall include the terms 'distributor' and 'factory branch' ~~which have been defined above, branch.~~
- (9) Repealed by Session Laws 1973, c. 1330, s. 39.
- (10) ~~"Motor vehicle" means any~~ Motor vehicle. -- Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this State.
- a. 'New motor vehicle' means a motor vehicle which has never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.
- b. 'Used motor vehicle' means a motor vehicle other than described in paragraph (10)a above.
- (11) ~~"Motor vehicle dealer" and "dealer" mean any~~ Motor vehicle dealer or dealer. A person who does any of the following:
- a. For commission, money, or other thing of value, buys, sells, or exchanges, whether outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

- b. On behalf of another and for commission, money, or other thing of value, arranges, offers, attempts to solicit, or attempts to negotiate the sale, purchase, or exchange of an interest in five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.
- c. Engages, wholly or in part, in the business of selling new motor vehicles or new or used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by that person, and sells five or more motor vehicles within any 12 consecutive months.
- d. Offers to sell, displays, or permits the display for sale for any form of compensation five or more motor vehicles within any 12 consecutive months.
- e. Primarily engages in the leasing or renting of motor vehicles to others and sells or offers to sell those vehicles at retail.

The term 'motor vehicle dealer' or 'dealer' does not include any of the following:

- a. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.
- b. Public officers while performing their official duties.
- c. Persons disposing of motor vehicles acquired for their own use or the use of a family member, and actually so used, when the vehicles have been acquired and used in good faith and not for the purpose of avoiding the provisions of this Article.
- d. Persons who sell motor vehicles as an incident to their principal business but who are not engaged primarily in the selling of motor vehicles. This category includes financial institutions who sell repossessed motor vehicles and insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance and who do not maintain a used car lot or building with one or more employed motor vehicle ~~salesmen~~, sales representatives.
- e. Persons manufacturing, distributing or selling trailers and semitrailers weighing not more than 750 pounds and carrying not more than a 1,500 pound load.

- f. A licensed real estate broker or salesman who sells a mobile home for the owner as an incident to the sale of land upon which the mobile home is located.
 - g. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.
 - h. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of motor vehicles owned by others.
 - i. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.
 - j. Any real property owner who leases any interest in property for use by a dealer.
 - k. Any person acquiring any interest in a motor vehicle for a family member.
- (12) ~~"Motor vehicle salesman" or "salesman" means any~~ Motor vehicle sales representative or salesman. -- A person who is employed as a ~~salesman~~ sales representative by, or has an agreement with, a motor vehicle ~~dealer,~~ dealer or a wholesaler to sell or exchange motor vehicles.
- (13) ~~"New motor vehicle dealer" means a~~ New motor vehicle dealer. -- A motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, new or new and used motor vehicles.
- (13a) ~~"Person" means every natural person, partnership, corporation, association, trust or estate or other legal entity.~~ Person. -- Defined in G.S. 20-4.01.
- (13b) ~~"Relevant market area" or "trade area" means the~~ Relevant market area or trade area. -- The area within a radius of 20 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new motor vehicle dealer the relevant market area shall be as follows:
- a. If the population in an area within a radius of 10 miles around the proposed site is 250,000 or more, the relevant market area shall be that area within the 10 mile radius; or
 - b. If the population in an area within a radius of 10 miles around the proposed site is less than 250,000, but the population in an area within a radius of 15

miles around the proposed site is 150,000 or more, the relevant market area shall be that area within the 15 mile radius; or

- c. Except as defined in ~~subsections (a) and (b) above, subparts a. and b.,~~ the relevant market area shall be the area within a radius of 20 miles around an existing dealer.

In determining population for this definition the most recent census by the U.S. Bureau of the Census or the most recent population update either from the National Planning Data Corporation or other similar recognized source shall be accumulated for all census tracts either wholly or partially within the relevant market area.

- (14) Repealed by Session Laws 1973, c. 1330, s. 39.
- (15) ~~"Retail installment sale" means and includes every~~ Retail installment sale. -- A sale of one or more motor vehicles to a buyer for ~~his~~ the buyer's use and not for resale, in which the price thereof is payable in one or more installments over a period of time and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under a form of contract designated ~~either~~ as a conditional sale, bailment lease, chattel mortgage or otherwise.
- (16) ~~"Used motor vehicle dealer" means a~~ Used motor vehicle dealer. -- A motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, used motor vehicles only.
- (17) Wholesaler. -- A person who sells or distributes used motor vehicles to motor vehicle dealers in this State, has a sales representative in this State, or controls any person who in whole or in part offers for sale, sells, or distributes any used motor vehicle to a motor vehicle dealer in this State. The provisions of G.S. 20-302, 20-305.1, and 20-305.2 that apply to distributors also apply to wholesalers."

Sec. 2. G.S. 20-287 reads as rewritten:

"§ 20-287. *Licenses required.*

It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer, motor vehicle ~~salesman,~~ sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, ~~factory or~~ distributor representative, or wholesaler

to engage in business ~~as such~~ in this State without first obtaining a license as provided in this Article. If any motor vehicle dealer acts as a motor vehicle ~~salesman, he~~ sales representative, the dealer shall obtain a motor vehicle ~~salesman's~~ sales representative's license in addition to a motor vehicle dealer's license. A ~~salesman~~ sales representative may have only one license, ~~and such~~ license. The license shall show the name of ~~the dealer or dealers~~ each dealer or wholesaler employing him. ~~A manufacturer or a factory branch or distributor or distributor branch, licensed as such, may also operate as a motor vehicle dealer without additional license, the sales representative.~~ The following license holders may operate as a motor vehicle dealer without obtaining a motor vehicle dealer's license or paying an additional fee: a manufacturer, a factory branch, a distributor, and a distributor branch. Any of these license holders who operates as a motor vehicle dealer may sell motor vehicles at retail only at an established salesroom."

Sec. 3. G.S. 20-288, as amended by Chapter 495 of the 1991 Session Laws, reads as rewritten:

"§ 20-288. ~~Application for license; information required and considered; license requirements; expiration of license; supplemental license; bond.~~

(a) Application for a license shall be made to the Division at such time, in such form, and contain such information as the Division shall require, and shall be accompanied by the required fee.

(b) The Division shall require in such application, or otherwise, information relating to matters set forth in G.S. 20-294 as grounds for the refusing of licenses, and to other pertinent ~~matter~~ matters commensurate with the safeguarding of the public interest, all of which shall be considered by the Division in determining the fitness of the applicant to engage in the business for which he seeks a license.

(c) All licenses that are granted shall expire unless sooner revoked or suspended, on June 30 of the year following date of issue.

(d) ~~Supplemental licenses shall be issued for each place of business, operated or proposed to be operated by the licensee, that is not contiguous to other premises for which a license is issued. To obtain a license as a wholesaler, the applicant must have an established office in this State. To obtain a license as a motor vehicle dealer, an applicant must have an established salesroom in this State.~~

An applicant for a license as a manufacturer, a factory branch, a distributor, a distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license for each established office, established salesroom, or other place of business in this State. An application for any of these licenses shall include a list of the applicant's places of business in this State.

(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or factory branch or wholesaler shall furnish a corporate surety bond or cash bond or fixed value equivalent thereof in the principal sum of twenty-five thousand dollars (\$25,000) and an additional principal sum of ten thousand dollars (\$10,000) for each additional place of business within this State at which motor vehicles are sold, of the bond. The amount of the bond for an applicant for a motor vehicle dealer's license is twenty-five thousand dollars (\$25,000) for one established salesroom of the applicant and ten thousand dollars (\$10,000) for each of the applicant's additional established salesrooms. The amount of the bond for other applicants required to furnish a bond is twenty-five thousand dollars (\$25,000) for one place of business of the applicant and ten thousand dollars (\$10,000) for each of the applicant's additional places of business. Each application for a license or a renewal of a license shall be accompanied by a list of locations at which the applicant engages in the business of selling motor vehicles in this State.

A corporate surety bond shall be approved by the Commissioner as to form and shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof shall be approved by the Commissioner as to form and terms of deposits as will secure the ultimate beneficiaries of the bond; and such bond shall not be available for delivery to any person contrary to the rules of the Commissioner. Any purchaser of a motor vehicle who shall have suffered any loss or damage by any act of a motor vehicle dealer license holder subject to this subsection that constitutes a violation of this Article or Article 15 shall have the right to institute an action to recover against such motor vehicle dealer the license holder and the surety. Every licensee license holder against whom such an action is instituted shall notify the Commissioner of the action within 10 days after process is served on the licensee, served with process. A corporate surety bond shall remain in force and effect and may not be canceled by the surety unless the motor vehicle dealer, manufacturer, distributor branch, or factory branch has terminated the operations of its business nor unless its bonded person stops engaging in business or the person's license has been is denied, suspended, or revoked under G.S. 20-294. Such cancellation may be had only upon 30 days' written notice to the Commissioner and shall not affect any liability incurred or accrued prior to the termination of such 30-day period. Provided nothing herein shall apply to a motor vehicle dealer, manufacturer, distributor branch or factory branch which This subsection does not apply to a license holder who deals only in trailers

having an empty weight of 4,000 pounds or less. This subsection ~~shall~~ does not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12."

Sec. 4. G.S. 20-289 reads as rewritten:

"§ 20-289. *License fees.*

(a) The license fee for each fiscal year, or part thereof, shall be as follows:

- (1) For motor vehicle dealers, distributors, distributor branches, and wholesalers, thirty dollars (\$30.00) for each ~~principal place of business, plus eight dollars (\$8.00) for a supplementary license for each car lot not immediately adjacent thereto;~~ business.
- (2) For manufacturers, seventy-five dollars (\$75.00), and for each factory branch in this State, forty-five dollars ~~(\$45.00);~~ (\$45.00).
- (3) For motor vehicle ~~salesmen,~~ sales representatives, five dollars ~~(\$5.00);~~ (\$5.00).
- (4) For factory representatives, or distributor ~~branch~~ representatives, six dollars ~~(\$6.00);~~ (\$6.00).
- ~~(5) Manufacturers, wholesalers, and distributors may operate as a motor vehicle dealer, without any additional fee or license.~~

(b) The fees ~~and licenses~~ collected under this section shall be ~~placed in~~ credited to the Highway Fund. ~~Provided, that nothing contained in this section or in any other section of this Article shall be construed as exempting any person from any license tax or fee imposed by any other provision of the law. These fees are in addition to all other taxes and fees."~~

Sec. 5. G.S. 20-290(a) reads as rewritten:

"(a) ~~The licenses~~ The license of a motor vehicle dealer shall list each of the dealer's established salesrooms in this State. A license of new motor vehicle dealers, used motor vehicle dealers, manufacturers, factory branches, distributors, and distributor branches a manufacturer, factory branch, distributor, distributor branch, or wholesaler shall specify the location of each place of business or branch or other location occupied or to be occupied by the licensee in conducting his business as such, and the license or supplementary license issued therefor list each of the license holder's places of business in this State. A license shall be conspicuously displayed on at each of such premises, place of business. In the event any such location is changed, the location of a business changes, the Division shall endorse the change of location on the license, without charge."

Sec. 6. G.S. 20-291 reads as rewritten:

~~" § 20-291. Salesman, etc., Representatives to carry license and display it on request; license to name employer.~~

Every ~~salesman~~, person to whom a sales representative, factory representative and distributor representative representative, or distributor representative license is issued shall carry ~~his~~ the license when engaged in ~~his~~ business, and shall display ~~the same~~ it upon request. The ~~licensee~~ license shall ~~name his employer, and in the event of a change of employer, he state the name of the representative's employer.~~ If the representative changes employers, the representative shall immediately mail ~~his~~ the license to the Division, which shall endorse ~~such~~ the change on the license without charge."

Sec. 7. G.S. 20-292 reads as rewritten:

~~" § 20-292. Use of unimproved lots and premises. Dealers may display motor vehicles for sale at retail only at established salesrooms.~~

~~A licensed motor vehicle dealer may use vacant lots and premises for the sale and display of motor vehicles. Provided, that if such lots and premises are not immediately adjacent to the dealer's established place of business, a supplementary license shall be obtained for each lot or premises. A new or used motor vehicle dealer may display a motor vehicle for sale at retail only at the dealer's established salesroom, unless the display is of a motor vehicle that meets any of the following descriptions:~~

- ~~(1) Contains the dealer's name or other sales information and is used by the dealer as a 'demonstrator' for transportation purposes.~~
- ~~(2) Is displayed at a trade show or exhibit at which no selling activities relating to the vehicle take place.~~
- ~~(3) Is displayed at the home or place of business of a customer at the request of the customer.~~

~~This section does not apply to recreational vehicles, house trailers, or boat, animal, camping, or other utility trailers."~~

Sec. 8. This act becomes effective October 1, 1991. A supplemental license issued to a motor vehicle dealer before the effective date of this act shall expire, if not sooner upon its own terms, 120 days after the effective date of this act.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.B. 1107

CHAPTER 663

AN ACT TO ALLOW PETS IN HOTEL ROOMS AT THE INNKEEPER'S PREROGATIVE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 72-7 is repealed.

Sec. 2. Article 1 of Chapter 72 of the General Statutes is amended by adding a new section to read:

" § 72-8. Admittance of pets to hotel rooms.

(a) Innkeepers may permit pets in rooms used for sleeping purposes and in adjoining rooms. Persons bringing pets into a room in which they are not permitted are in violation of this section and punishable according to subsection (d) of this section.

(b) Innkeepers allowing must post a sign measuring not less than five inches by seven inches at the place where guests register informing them pets are permitted in sleeping rooms and in adjoining rooms. If certain pets are permitted or prohibited, the sign must so state. If any pets are permitted, the innkeeper must maintain a minimum of ten percent (10%) of the sleeping rooms in the inn or hotel as rooms where pets are not permitted and the sign required by this subsection must also state that such rooms are available.

(c) All sleeping rooms in which the innkeeper permits pets must contain a sign measuring not less than five inches by seven inches, posted in a prominent place in the room, which shall be separate from the sign required by G.S. 72-6, stating that pets are permitted in the room, or whether certain pets are prohibited or permitted in the room, and stating that bringing pets into a room in which they are not permitted is a misdemeanor under North Carolina law punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment not to exceed 30 days, or both.

(d) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall pay a fine not to exceed five hundred dollars (\$500.00) or be imprisoned for not more than 30 days, or both.

(e) The provisions of this section are not applicable to assistance dogs admitted to sleeping rooms and adjoining rooms under the provisions of Chapter 168 of the General Statutes."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.B. 1178

CHAPTER 664

AN ACT TO AUTHORIZE THE TOWN OF CASWELL BEACH
AND THE VILLAGE OF BALD HEAD ISLAND TO LEVY A
ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Caswell Beach Occupancy Tax. (a) Authorization and Scope. The Board of Commissioners of the Town of Caswell Beach may by resolution, after not less than 10 days' public notice and a public hearing held pursuant thereto, levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations within the town that are subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the town that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days.

(b) Collection. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The town shall design, print, and furnish to all appropriate businesses in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The town shall administer the occupancy tax levied under this act. A tax levied under this act is due and payable to the town tax collector in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the town tax collector under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional penalty of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause

shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

(e) Use of Proceeds. The town may use the proceeds of a tax levied under this act only for tourism-related expenditures. As used in this act, the term "tourism-related expenditures" includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. The Board of Commissioners of the Town of Caswell Beach may by resolution repeal a tax levied under this act. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Bald Head Island Occupancy Tax. (a) Authorization and Scope. The Village Council of the Village of Bald Head Island may by resolution, after not less than 10 days' public notice and a public hearing held pursuant thereto, levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations within the village that are subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the village that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days.

(b) Collection. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for

furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the village. The occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The village shall design, print, and furnish to all appropriate businesses in the village the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The village shall administer the occupancy tax levied under this act. A tax levied under this act is due and payable to the village finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the village. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the village finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional penalty of five percent (5%) for each additional month or fraction thereof until the tax is paid. The village council may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

(e) Use of Proceeds. The village may use the proceeds of a tax levied under this act only to promote tourism in the village and for tourism-related expenditures. As used in this act, the term "tourism-related expenditures" includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and

the control and repair of waterfront erosion. These funds may not be used for services normally provided by the village on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the village to attract and provide for tourists.

(f) **Effective Date of Levy.** A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) **Repeal.** The Village Council of the Village of Bald Head Island may by resolution repeal a tax levied under this act. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

S.B. 580

CHAPTER 665

AN ACT AUTHORIZING DURHAM COUNTY TO INCREASE ITS ROOM OCCUPANCY TAX FROM THREE PERCENT TO FIVE PERCENT AND PROVIDING FOR THE USE OF THE PROCEEDS OF THE TAX.

The General Assembly of North Carolina enacts:

Section 1. (a) **Levy of Additional Occupancy Tax.** In addition to the tax authorized by Chapter 969 of the 1985 Session Laws, the Durham County Board of Commissioners may levy a room occupancy tax of two percent (2%) of the gross receipts derived from the rental of accommodations taxable under that Chapter. The levy, collection, administration, and repeal of the tax authorized by this act shall be in accordance with the provisions of Section 1 of Chapter 969 of the 1985 Session Laws. Durham County may not levy a tax under this act unless it also levies the tax authorized under Chapter 969 of the 1985 Session Laws.

(b) **Use of Proceeds of Additional Tax.** Durham County shall, on a monthly basis, remit the net proceeds of the tax levied under this act to the Durham Convention & Visitors Bureau, a joint agency established by interlocal cooperation agreement between Durham

County and the City of Durham. The Bureau may use funds remitted to it under this subsection only to promote travel and tourism in Durham County. If the interlocal cooperation agreement expires or the Bureau is otherwise dissolved, Durham County shall use the net proceeds of the tax levied under this section only to promote travel and tourism in Durham County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

Sec. 2. Section 2 of Chapter 969 of the 1985 Session Laws reads as rewritten:

"Sec. 2. Use and Distribution of Tax Revenue in Durham County. Durham County shall retain fifty-seven and one-half percent (57½%) of the revenue collected from a tax levied under this act and shall distribute the remaining forty-two and one-half percent (42½%) of the revenue to the City of Durham. Funds retained by the county or distributed to the City of Durham may be used for any purpose authorized by law. ~~law, except that at least twenty-five percent (25%) of the funds so retained or distributed must be used for promotion of travel and tourism.~~"

Sec. 3. Section 2 of this act is effective upon ratification and applies to taxes that accrue on or after the date of ratification. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

H.B. 80

CHAPTER 666

AN ACT TO AUTHORIZE A REGIONAL TRANSPORTATION AUTHORITY TO LEVY A VEHICLE REGISTRATION TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-613 reads as rewritten:

"§ 160A-613. *Funds.*

(a) The establishment and operation of an Authority are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the Authority. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate or lease any of their interests in any property to the Authority.

(b) The Authority may levy an annual vehicle registration tax not to exceed five dollars (\$5.00) per vehicle in accordance with G.S. 160A-623."

Sec. 2. Chapter 160A of the General Statutes is amended by adding a new section to read:

" § 160A-623. *Regional Transportation Authority registration tax.*

(a) Tax Authorized. In accordance with this section, an Authority organized under this Article may levy an annual license tax upon any motor vehicle with a tax situs within its territorial jurisdiction as defined by G.S. 160A-602.

(b) Purpose. The purpose of the tax levied under this section is to raise revenue for capital and operating expenses of an Authority in providing a public transportation system.

(c) Amount of Tax. The annual levy under this section must be a full dollar amount, but may not exceed five dollars (\$5.00) per year.

(d) Procedure for Levy. The Board of Trustees of an Authority may levy the tax provided by this section by passage of a resolution, after not less than 10 days' public notice and after a public hearing. Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the Board of Trustees in the resolution levying the tax, which shall in no case be earlier than the first day of the third calendar month after the adoption of the resolution. The Board of Trustees, upon adoption of the resolution, shall cause a certified copy of the resolution to be delivered immediately to the Division of Motor Vehicles.

(e) Collection of Tax. Upon receipt of the resolutions under subsections (d) and (j), the Division of Motor Vehicles shall proceed to collect and administer the tax. The tax is due at the same time and subject to the same restrictions as in G.S. 20-87 (1), (2), (4), (5), (6), and (7) and G.S. 20-88. The Commissioner of Motor Vehicles may adopt such rules as are necessary and proper to implement this section.

(f) Modification or Repeal of Tax. The Board of Trustees may, by resolution, terminate the levy of the tax under this section, or increase or decrease the amount of the tax, under the same procedures as provided in subsection (d) of this section, and subject to the limitations provided in subsections (c) and (j) of this section. Collection of the increased or decreased tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the Board of Trustees in the resolution increasing or reducing the tax, which shall in no case be earlier than the first day of the third calendar month after the adoption of the resolution. The effective date of the termination of the tax shall be only on and after the first day of a calendar month set by the Board of Trustees in the resolution terminating the tax, which shall in no case be earlier than the first day of the third calendar month after the adoption of the resolution. No liability for any tax levied under this section which shall have attached

prior to the effective date on which a levy is terminated or reduced shall be discharged as a result of such termination or reduction, and no right to a refund of tax or otherwise, which shall have accrued prior to the effective date on which a levy is terminated or reduced shall be denied as a result of such termination.

(g) Vehicles Subject to Tax. Only vehicles required to pay a tax under G.S. 20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88 shall be subject to the tax provided by this section. Taxes shall be prorated in accordance with G.S. 20-66 or G.S. 20-95, as applicable.

(h) Tax Situs. The fact that the county listed by the owner under G.S. 105-314 as the county where the vehicle is subject to ad valorem taxation is within the territorial jurisdiction of the Authority shall be prima facie evidence that the vehicle has a tax situs within the territorial jurisdiction of the Authority.

(i) Distribution of Proceeds. Taxes paid under this section shall be credited to a special fund, and the net proceeds disbursed quarterly to the appropriate Authority. Interest credited to the fund shall be disbursed quarterly to the Highway Fund to reimburse the Division of Motor Vehicles for the cost of collecting and administering the tax.

(il) Limitation on Expenditures. Of the proceeds of the tax, the Authority may not expend more than two percent (2%) on administrative expenses.

(j) When Special Tax Board and Board of County Commissioners Authorization Necessary. No Authority may adopt a resolution to levy any tax under this section, or to increase the amount of the levy, unless the special tax board of that Authority and the board of county commissioners of each county organizing the Authority have first passed a resolution approving the levy or increase, except where the levy or increase in tax is necessary for debt service on bonds or notes that special tax board and each of the boards of county commissioners had previously approved under G.S. 159-51. The Special Tax Board and Board of County Commissioners, upon adoption of the resolution, shall cause a certified copy of the resolution to be delivered immediately to the Authority and to the Division of Motor Vehicles."

Sec. 3. G.S. 105-314(a) reads as rewritten:

"(a) Every motor vehicle owner applying to the State Division of Motor Vehicles for motor vehicle license tags, or for renewal of such, shall specify in the application the county in which each such motor vehicle is subject to ad valorem taxation. If any such vehicle is not subject to ad valorem taxation in this State, that fact, with the reason therefor, shall be stated in the application. No State license tags shall be issued to any applicant, or renewed for such applicant until the requirements of this subsection have been met. It shall be a

misdeemeanor to knowingly make a false statement in the application as to the information required to be supplied by this section."

Sec. 4. Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-624. Recommendation of additional revenue sources.

The Authority may make recommendations to the General Assembly concerning additional revenue sources, including, but not limited to:

- (1) Annual vehicle registration fees;
- (2) Ad valorem taxes;
- (3) Local land transfer taxes;
- (4) Drivers license fees;
- (5) Sales taxes on automobile parts and accessories; and
- (6) Motor fuels taxes.

Any additional revenue sources for an Authority must be approved by the General Assembly."

Sec. 5. G.S. 160A-617 is rewritten to read:

"§ 160A-617. Bonds and notes authorized.

In addition ~~of~~ to the powers granted by this Article, the authority may issue bonds and notes pursuant to the provisions of the Local Government Bond Act and the Local Government Revenue Bond Act for the purpose of financing public transportation systems or any part thereof and to refund such bonds and notes, whether or not in advance of their maturity or earliest redemption date. Any bond order must be approved by resolution adopted by the special tax board of the Authority and in the case of a bond order under the Local Government Bond Act also by the board of county commissioners of each county organizing the authority. To pay any bond or note issued under the Local Government Bond Act, the Authority may not pledge the levy of any ad valorem tax, but only a tax or taxes it is authorized to levy."

Sec. 6. G.S. 159-51 as amended by Chapter 325, Session Laws of 1991, reads as rewritten:

"§ 159-51. Application to Commission for approval of bond issue; preliminary conference; acceptance of application.

No bonds may be issued under this Article unless the issue is approved by the Local Government Commission. The governing board of the issuing unit shall file an application for Commission approval of the issue with the secretary of the Commission. If the issuing unit is a regional public transportation authority, the application must be accompanied by ~~a resolution~~ resolutions of the special tax board of that authority and of each of the boards of county commissioners of the counties organizing the authority approving of the application. The application shall state such facts and have attached to it such documents concerning the proposed bonds and the financial condition

of the issuing unit as the secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference to consider the proposed bond issue. If the issuing unit is a merged school administrative unit described in G.S. 115C-513, each county in which the merged unit is located may attend the preliminary conference.

After an application in proper form has been filed, and after a preliminary conference if one is required, the secretary shall notify the unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the unit has complied with this section."

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

H.B. 479

CHAPTER 667

AN ACT TO PROVIDE THAT CONSENT TO ADOPTION IS NOT REVOCABLE AFTER A CERTAIN PERIOD OF TIME AND TO AMEND THE PROCEDURES REGARDING LEGITIMATION OF CHILDREN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-11 reads as rewritten:

" § 48-11. *Consent not revocable.*

(a) No consent described in G.S. 48-6, 48-7, or 48-9 may be revoked by the consenting party:

- (1) After the entering of an interlocutory decree.
- (2) After the entering of a final order of adoption when the entering of an interlocutory decree has been waived in accordance with the provisions of G.S. 48-21.
- (3) After ~~three months~~ 30 days from the date of the giving of the consent.

~~(4) After 30 days from the date of the giving of the consent, when the consent has been given generally to a director of social services or to a duly licensed non-profit child-placing agency.~~

When the consent of any person or agency is required under the provisions of this Chapter, the filing of such consent with the petition shall be sufficient to make the consenting person or agency a party of record to the proceeding; and no service of any process need be made upon such person or agency.

(b) Revocation of a consent to adoption must be made in writing and must be signed by the person revoking consent before any person empowered to take acknowledgements of signatures pursuant to Chapter 47 of the General Statutes of North Carolina. If the petition for adoption and the consent have been filed according to G.S. 48-7(a), the person revoking consent shall deliver the revocation to the clerk of court in the county in which the petition for adoption and the consent are filed. If the person revoking consent is unable to determine the county in which the petition for adoption and the consent have been filed or if the petition for adoption has not been filed, then and in that event said person is responsible for delivering the revocation in person or by registered or certified mail, return receipt requested, to the person or to the director of social services to whom the consent was given or to the duly licensed child-placing agency to which the consent for adoption was given. The person, the director of social services, or the duly licensed child-placing agency shall immediately deliver the revocation to the clerk of court in the county in which the petition for adoption and the consent are filed or, if a petition for adoption has not been filed by the prospective adoptive parents, revocation of the consent shall prohibit the filing of such petition."

Sec. 2. Article 2 of Chapter 49 of the General Statutes is amended by adding the following new section to read:

" § 49-12.1. *Legitimation when mother married.*

(a) The putative father of a child born to a mother who is married to another man may file a special proceeding to legitimate the child. The procedures shall be the same as those specified by G.S. 49-10, except that the spouse of the mother of the child shall be a necessary party to the proceeding and shall be properly served. A guardian *ad litem* shall be appointed to represent the child if the child is a minor.

(b) The presumption of legitimacy can be overcome by clear and convincing evidence.

(c) The parties may waive a jury trial and enter a consent order with the approval of the clerk of superior court. The order entered by the clerk shall find the facts and declare the proper person the father of the child and may change the surname of the child.

(d) The effect of legitimation under this section shall be same as provided by G.S. 49-11.

(e) A certified copy of the order of legitimation under this section shall be sent by the clerk of superior court under his official seal to the State Registrar of Vital Statistics who shall make a new birth certificate bearing the full name of the father of the child and, if ordered by the clerk, changing the surname of the child."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

H.B. 564

CHAPTER 668

AN ACT TO REGULATE THE PRACTICE OF DIETETICS/NUTRITION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 25.

"Dietetics/Nutrition.

" § 90-350. Short title.

This Article shall be known as the Dietetics/Nutrition Practice Act.

" § 90-351. Purpose.

It is the purpose of this Article to safeguard the public health, safety and welfare and to protect the public from being harmed by unqualified persons by providing for the licensure and regulation of persons engaged in the practice of dietetics/nutrition and by the establishment of educational standards for those persons.

" § 90-352. Definitions.

As used in this Article, unless the context otherwise requires, the term:

- (1) 'Board' means the North Carolina Board of Dietetics/Nutrition.
- (2) 'Dietetics/nutrition' means the integration and application of principles derived from the science of nutrition, biochemistry, physiology, food, and management and from behavioral and social sciences to achieve and maintain a healthy status. The primary function of dietetic/nutrition practice is the provision of nutrition care services.
- (3) 'Licensed dietitian/nutritionist' means an individual licensed in good standing to practice dietetics/nutrition.
- (4) 'Nutrition care services' means any, part or all of the following:
 - a. Assessing the nutritional needs of individuals and groups, and determining resources and constraints in the practice setting.
 - b. Establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints.
 - c. Providing nutrition counseling in health and disease.

- d. Developing, implementing, and managing nutrition care systems.
- e. Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition services.

'Nutrition care services' does not include the retail sale of food products or vitamins.

" § 90-353. Creation of Board.

(a) The North Carolina Board of Dietetics/Nutrition is created. The Board shall consist of seven members as follows:

- (1) One member shall be a professional whose primary practice is clinical dietetics/nutrition;
 - (2) One member shall be a professional whose primary practice is community or public health dietetics/nutrition;
 - (3) One member shall be a professional whose primary practice is consulting in dietetics/nutrition;
 - (4) One member shall be a professional whose primary practice is in management of nutritional services;
 - (5) One member shall be an educator on the faculty of a college or university specializing in the field of dietetics/nutrition;
 - (6) Two members shall represent the public at large.
- (b) Professional members of the Board shall:

- (1) Be citizens of the United States and residents of this State;
- (2) Have practiced in the field of dietetics/nutrition for at least five years; and
- (3) Be licensed under this Article, except that initial appointees shall be licensed under this Article no later than March 31, 1992.

(c) The members of the Board appointed from the public at large shall be citizens of the United States and residents of this State and shall not be any of the following:

- (1) A dietician/nutritionist.
- (2) An agent or employee of a person engaged in the profession of dietetics/nutrition.
- (3) A licensed health care professional or enrolled in a program to become prepared to be a licensed health care professional.
- (4) An agent or employee of a health care institution, a health care insurer, or a health care professional school.
- (5) A member of any allied health profession or enrolled in a program to become prepared to be a member of an allied health profession.
- (6) The spouse of an individual who may not serve as a public member of the Board.

" § 90-354. Appointments and removal of Board members, terms and compensation.

(a) The members of the Board shall be appointed as follows:

- (1) The Governor shall appoint the professional member described in G.S. 90-353(a)(5) and the two public members described in G.S. 90-353(a)(6);
- (2) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint the professional members described in G.S. 90-353(a)(1) and G.S. 90-353(a)(2) in accordance with G.S. 120-121, one of whom shall be a nutritionist with a masters or higher degree in a nutrition-related discipline; and
- (3) The General Assembly upon the recommendation of the President of the Senate shall appoint the professional members described in G.S. 90-353(a)(3) and G.S. 90-353(a)(4) in accordance with G.S. 120-121, one of whom shall be a nutritionist with a masters or higher degree in a nutrition-related discipline.

(b) Of the members initially appointed, the professional member appointed by the Governor, one of the professional members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and one of the professional members appointed by the General Assembly upon the recommendation of the President of the Senate shall be appointed for three-year terms; one of the public members appointed by the Governor, one of the professional members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and one of the professional members appointed by the General Assembly upon the recommendation of the President of the Senate shall be appointed for two-year terms; and one of the public members appointed by the Governor shall be appointed for a one-year term. After the initial terms specified in this subsection, members of the Board shall take office on the first day of July immediately following the expired term of that office and shall serve for a term of three years and until their successors are appointed and qualified.

(c) No member shall serve on the Board for more than two consecutive terms.

(d) The Governor may remove members of the Board, after notice and opportunity for hearing, for:

- (1) Incompetence;
- (2) Neglect of duty;
- (3) Unprofessional conduct;
- (4) Conviction of any felony;
- (5) Failure to meet the qualifications of this Article; or

(6) Committing any act prohibited by this Article.

(e) Any vacancy shall be filled by the appointing authority originally filling that position, except that any vacancy in appointments by the General Assembly shall be filled in accordance with G.S. 120-122.

(f) Members of the Board shall receive no compensation for their services, but shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5.

" § 90-355. Election of officers; meetings of Board.

(a) Within 30 days after making appointments to the Board, the Governor shall call the first meeting of the Board. The Board shall elect a chairman and a vice-chairman who shall hold office according to rules adopted by the Board.

(b) The Board shall hold at least two regular meetings each year as provided by rules adopted by the Board. The Board may hold additional meetings upon the call of the chairman or any two Board members. A majority of the Board membership shall constitute a quorum.

" § 90-356. Power and responsibility of Board.

The Board shall:

- (1) Determine the qualifications and fitness of applicants for licenses, renewal of licenses, and reciprocal licenses;
- (2) Adopt rules necessary to conduct its business, carry out its duties, and administer this Article;
- (3) Adopt and publish a code of ethics;
- (4) Deny, issue, suspend, revoke, and renew licenses in accordance with this Article;
- (5) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article;
- (6) Employ professional, clerical, investigative or special personnel necessary to carry out the provisions of this Article, and purchase or rent office space, equipment and supplies;
- (7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses;
- (8) Conduct administrative hearings in accordance with Article 3 of Chapter 150B of the General Statutes when a 'contested case' as defined in G.S. 150B-2(2) arises under this Article;
- (9) Establish reasonable fees as allowed by this Article for applications for examination; initial, provisional, and renewal licenses; and other services provided by the Board;

- (10) Submit an annual report to the Governor and General Assembly of all its official actions during the preceding year, together with any recommendations and findings regarding improvements of the practice of dietetics/nutrition;
- (11) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board;
- (12) Request and receive the assistance of State educational institutions or other State agencies;
- (13) Approve educational curricula, clinical practice and continuing education requirements for persons seeking licensure under this Article.

" § 90-357. License requirements.

Each applicant for a license as a licensed dietitian/nutritionist shall meet the following requirements:

- (1) Submit a completed application as required by the Board;
- (2) Submit any fees required by the Board; and
- (3) Either:
 - a. Provide evidence of current registration as a Registered Dietitian by the Commission on Dietetic Registration;
 - or
 - b. 1. Have received a minimum of a baccalaureate degree from a regionally accredited college or university with a major course of study in human nutrition, foods and nutrition, dietetics, community nutrition, public health nutrition, or an equivalent major course of study, as approved by the Board. Regardless of the course of study, applicants must have successfully completed the Board's minimum course requirements in food sciences, social and behavioral sciences, chemistry, biology, human nutrition, diet therapy, advanced nutrition, and food systems management. Applicants who have obtained their education outside of the United States and its territories must have their academic degree validated by the Board as equivalent to a baccalaureate or masters degree conferred by a regionally accredited college or university in the United States; and
 2. Have completed a planned, continuous program in approved clinical practice of not less than 900 hours under the supervision of a licensed dietitian/nutritionist as approved by the Board; and

3. Have passed an examination as defined by the Board; or
- c. 1. Have received from a regionally accredited college or university a masters degree in human nutrition, nutrition education, foods and nutrition, public health nutrition or an equivalent major course of study as approved by the Board. Applicants who have obtained their education outside of the United States and its territories must have their academic degree validated by the Board as being equivalent to a masters degree conferred by a regionally accredited college or university in the United States; and
2. Have a documented supervised practice experience component in dietetic practice of not less than 900 hours under the supervision of a licensed health care provider; and
3. Have passed an examination as defined by the Board; or
- d. Have received from a regionally accredited college or university a doctorate in human nutrition, nutrition education, foods and nutrition, public health nutrition, or an equivalent major course of study as approved by the Board, or have received a Doctor of Medicine. Regardless of the course of study, applicants must have successfully completed the Board's minimum course requirements in social and behavioral sciences, chemistry, biology, human nutrition, diet therapy and advanced nutrition. Applicants who have obtained their education outside of the United States and its territories must have their academic degree validated by the Board as being equivalent to a doctorate or Doctor of Medicine conferred by a regionally accredited college or university in the United States.

" § 90-358. Notification of applicant following evaluation of application.

After evaluation of the application and of any other evidence submitted, the Board shall notify each applicant that the application and evidence submitted are satisfactory and accepted, or unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection.

" § 90-359. Examinations.

Competency examinations shall be administered at least twice each year to qualified applicants for licensing. The examinations may be administered by a national testing service. The Board shall prescribe

or develop the examinations which may include an examination given by the Commission on Dietetic Registration of the American Dietetic Association or any other examination approved by two-thirds vote of the entire Board.

" § 90-360. Granting license without examination.

The Board may grant, upon application and payment of proper fees, a license without examination to a person who at the time of application holds a valid license as a licensed dietitian/nutritionist issued by another state or any political territory or jurisdiction acceptable to the Board if in the Board's opinion the requirements for that license are substantially the same as the requirements of this Article.

" § 90-361. Provisional licenses.

The Board may grant a provisional license for a period not exceeding 12 months to any individual who has successfully completed the educational and clinical practice requirements and has made application to take the examination required under G.S. 90-357. A provisional license shall allow the individual to practice as a dietitian/nutritionist under the supervision of a dietitian/nutritionist licensed in this State and shall be valid until revoked by the Board.

" § 90-362. License as constituting property of Board; display requirement; renewal; inactive status.

(a) A license issued by the Board is the property of the Board and must be surrendered to the Board on demand.

(b) The licensee shall display the license certificate in the manner prescribed by the Board.

(c) The licensee shall inform the Board of any change of the licensee's address.

(d) The license shall be reissued by the Board annually upon payment of a renewal fee if the licensee is not in violation of this Article at the time of application for renewal and if the applicant fulfills current requirements of continuing education as established by the Board.

(e) Each person licensed under this Article is responsible for renewing his license before the expiration date. The Board shall notify a licensee of pending license expiration at least 30 days in advance thereof.

(f) The Board may provide for the late renewal of a license upon the payment of a late fee, but no such late fee renewal may be granted more than five years after a license expires.

(g) Under procedures and conditions established by the Board, a licensee may request that his license be declared inactive. The licensee may apply for active status at any time and upon meeting the conditions set by the Board shall be declared in active status.

" § 90-363. Suspension, revocation and refusal to renew license.

(a) The Board may deny or refuse to renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the licensee or applicant for licensure has engaged in any of the following conduct:

- (1) Employment of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license, or the renewal of a license;
- (2) Committing an act or acts of malpractice, gross negligence or incompetence in the practice of dietetics/nutrition;
- (3) Practicing as a licensed dietitian/nutritionist without a current license;
- (4) Engaging in conduct that could result in harm or injury to the public;
- (5) Conviction of or a plea of guilty or *nolo contendere* to any crime involving moral turpitude;
- (6) Adjudication of insanity or incompetency, until proof of recovery from the condition can be established;
- (7) Engaging in any act or practice violative of any of the provisions of this Article or any rule adopted by the Board, or aiding, abetting or assisting any person in such a violation.

(b) Denial, refusal to renew, suspension, revocation or imposition of probationary conditions upon a license may be ordered by the Board after a hearing held in accordance with Chapter 150B of the General Statutes and rules adopted by the Board. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year.

" § 90-364. Fees.

The Board shall establish fees in accordance with Chapter 150B of the General Statutes in amounts to cover the cost of services rendered for the following purposes:

- (1) For an initial application, a fee not to exceed twenty-five dollars (\$25.00);
- (2) For examination or reexamination, a fee not to exceed one hundred fifty dollars (\$150.00);
- (3) For issuance of a license, a fee not to exceed one hundred dollars (\$100.00);
- (4) For the renewal of a license, a fee not to exceed fifty dollars (\$50.00);
- (5) For the late renewal of a license, an additional late fee not to exceed fifty dollars (\$50.00);
- (6) For a provisional license, a fee not to exceed thirty-five dollars (\$35.00); and

- (7) For copies of Board rules and licensure standards, charges not exceeding the actual cost of printing and mailing.

" § 90-365. Requirement of license.

After March 31, 1992, it shall be unlawful for any person who is not currently licensed under this Article to do any of the following:

- (1) Engage in the practice of dietetics/nutrition.
- (2) Use the title 'dietitian/nutritionist'.
- (3) Use the words 'dietitian,' 'nutritionist,' or 'licensed dietitian/nutritionist' alone or in combination.
- (4) Use the letters 'LD,' 'LN,' or 'LDN,' or any facsimile or combination in any words, letters, abbreviations, or insignia.
- (5) To imply orally or in writing or indicate in any way that the person is a licensed dietitian/nutritionist.

" § 90-366. Violation a misdemeanor.

Any person who violates any provision of this Article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned, or both, in the discretion of the court. Each act of such unlawful practice shall constitute a distinct and separate offense.

" § 90-367. Injunctions.

The Board may make application to any appropriate court for an order enjoining violations of this Article, and upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action.

" § 90-368. Persons and practices not affected.

The requirements of this Article shall not apply to:

- (1) A health care professional duly licensed in accordance with Chapter 90 of the General Statutes.
- (2) A student or trainee, working under the direct supervision of a licensed dietitian/nutritionist while fulfilling an experience requirement or pursuing a course of study to meet requirements for licensure, for a limited period of time as determined by the Board.
- (3) A dietitian/nutritionist serving in the Armed Forces or the Public Health Service of the United States or employed by the Veterans Administration when performing duties associated with that service or employment.
- (4) A person aiding the practice of dietetics/nutrition if the person works under the direct supervision of a licensed dietitian/nutritionist and performs only support activities that do not require formal academic training in the basic food, nutrition, chemical, biological, behavioral, and social sciences that are used in the practice of dietetics.

- (5) An employee of the State, a local political subdivision, or a local school administrative unit or a person that contracts with the State, a local political subdivision, or a local school administrative unit while engaged in the practice of dietetics/nutrition within the scope of that employment.
- (6) A retailer who does not hold himself out to be a dietitian or nutritionist when that retailer furnishes nutrition information to customers on food, food materials, dietary supplements and other goods sold at his retail establishment in connection with the marketing and distribution of those goods at his retail establishment.
- (7) A person who provides weight control services; provided the program has been reviewed by, consultation is available from, and no program change can be initiated without prior approval of:
 - a. A licensed dietitian/nutritionist;
 - b. A dietitian/nutritionist licensed in another state that has licensure requirements that are at least as stringent as under this Article; or
 - c. A dietitian registered by the Commission on Dietetic Registration of the American Dietetic Association.
- (8) Employees or independent contractors of a hospital health care facility licensed under Article 5 or Part A of Article 6 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes.
- (9) A person who does not hold himself out to be a dietitian or nutritionist when that person furnishes nutrition information on food, food materials, or dietary supplements. This Article does not prohibit that person from making explanations to customers about foods or food products in connection with the marketing and distribution of these products.
- (10) An herbalist or other person who does not hold himself out to be a dietitian or nutritionist when the person furnishes nonfraudulent specific nutritional information and counseling about the reported or historical use of herbs, vitamins, minerals, amino acids, carbohydrates, sugars, enzymes, food concentrates, or other foods.

" § 90-369. *Third party reimbursement; limitation on modifications.*

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article. In no event shall there be any substantive change to G.S. 90-352, 90-357, or 90-368 unless the change is reviewed by the Legislative Committee

on New Licensing Boards pursuant to Article 18A of Chapter 120 of the General Statutes."

Sec. 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(50a) The North Carolina Board of Dietetics/Nutrition as created by Article 25 of Chapter 90 of the General Statutes."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

H.B. 770

CHAPTER 669

AN ACT TO CREATE A MIXED BEVERAGES CATERING PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(12) Mixed Beverages Catering Permit. -- A mixed beverages catering permit authorizes a hotel or a restaurant that has a mixed beverages permit to bring spirituous liquor onto the premises where the hotel or restaurant is catering food for an event and to serve the liquor to guests at the event."

Sec. 2. G.S. 18B-902(d) is amended by adding a new subdivision to read:

"(29) Mixed beverages catering permit -- \$100.00."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

H.B. 881

CHAPTER 670

AN ACT TO ESTABLISH THE FEE-BASED PRACTICING PASTORAL COUNSELORS CERTIFICATION ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 25.

"Fee-Based Practicing Pastoral Counselors.

" § 90-350. Title.

This Article shall be known as the 'Fee-Based Practicing Pastoral Counselor Certification Act.'

" § 90-351. Purpose.

It is the purpose of this Article to protect the public safety and welfare by providing for the certification and regulation of persons engaged in the practice of fee-based pastoral counseling and pastoral psychotherapy.

" § 90-352. Definitions.

The following definitions apply in this Article:

- (1) Accredited educational institution. -- A college, university, or theological seminary chartered by the State and accredited by the appropriate regional association of colleges and secondary schools or by the appropriate association of theological schools and seminaries.
- (2) Board. -- The North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors.
- (3) Fee-based pastoral counseling associate. -- An individual, certified under this Article, who renders or offers professional pastoral counseling services only under qualified supervision in accordance with rules adopted by the Board.
- (4) Fee-based pastoral counselor. -- A minister who receives fees from the practice of pastoral counseling.
- (5) Fee-based practice of pastoral counseling. -- To render or offer for a fee or other compensation professional pastoral counseling services, whether to the general public or to organizations, either public or private; to individuals, singly or in groups; to couples, married or in other relationships; and to families.
- (6) Fee-based professional pastoral counseling services. -- The application of pastoral care and pastoral counseling principles and procedures for a fee or other compensation with the purpose of understanding, anticipating, or influencing the behavior of individuals in order to assist in their attainment of maximum personal growth; optimal work, marital, family, church, school, social, and interpersonal relationships; and healthy personal adaptation. The application of pastoral care and pastoral psychotherapy principles and procedures includes sustaining, healing, shepherding, nurturing, guiding, and reconciling; interviewing, counseling, and using psychotherapy, diagnosing, preventing, and ameliorating difficulties in living; and resolving interpersonal and social conflict. Teaching, writing, the giving of public speeches or lectures, and research concerned with pastoral care and counseling

principles are not included in professional pastoral counseling services within the meaning of this Article.

- (7) Minister. -- A person who has been called, elected, or otherwise authorized by a church, denomination, or faith group through ordination, consecration or equivalent means, to exercise within and on behalf of the denomination or faith group specific religious leadership and service that furthers its purpose and mission and that differs from the religious service of the laity of the denomination or faith group.
- (8) Pastoral counseling. -- Used interchangeably with pastoral psychotherapy to mean a process in which a pastoral counselor utilizes insights and principles derived from the disciplines of theology and the behavioral sciences to help persons achieve wholeness and health.
- (9) Pastoral psychotherapy. -- The use of pastoral care and pastoral counseling methods in a professional relationship to assist a person in modifying feelings, attitudes, and behavior that are intellectually, socially, emotionally, or spiritually maladjustive, ineffectual, or that otherwise contribute to difficulties in living.

" § 90-353. Exemptions.

(a) Nothing in this Article shall be construed as limiting the ministry, activities, or services of a minister called, elected, or otherwise authorized by a church, denomination, or faith group to perform the ordinary duties or functions of the clergy.

(b) Nothing in this Article shall be construed as limiting the activities, services, or use of a title to designate a training status of a student, intern, or fellow preparing for the practice of pastoral care and counseling under qualified supervision in an accredited educational institution or service facility, provided that those activities and services constitute a part of the course of study.

(c) Nothing in this Article shall be construed to limit or restrict physicians, optometrists, or psychologists licensed to practice under the laws of North Carolina; or to restrict qualified members of other professional groups who render counseling and other helping services including counselors, social workers, and other similar professions; or to restrict qualified members of any other professional groups in the practice of their respective professions, provided they do not claim to the public by any title or description stating or implying that they are certified fee-based practicing pastoral counselors or certified fee-based pastoral counseling associates, or that they are certified to receive fees for the practice of pastoral counseling.

(d) Except as otherwise provided in this Article, if a person exempt from the provisions of this Article becomes certified under this

Article, he or she shall be required to comply with the requirements of this Article and rules adopted by the Board.

" § 90-354. Temporary certificates.

The Board may issue a temporary pastoral counseling certificate to any person who is otherwise qualified under this Article until the next annual examination is given.

" § 90-355. Creation of Board; appointment and removal of members; terms and compensation; powers.

(a) The North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors is created. The Board shall consist of seven members as follows:

- (1) Three members appointed by the Governor, two of whom shall be certified fee-based practicing pastoral counselors and one of whom shall be a certified fee-based pastoral counseling associate.
- (2) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a certified fee-based practicing pastoral counselor and one of whom shall be a public member who has no direct affiliation with the practice of pastoral counseling.
- (3) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be a certified fee-based practicing pastoral counselor and one of whom shall be a public member who has no direct affiliation with the practice of pastoral counseling.

Initial appointees shall be persons who meet the education and experience requirements for certification under this Article and shall be deemed certified upon appointment. In making appointments, consideration shall be given to adequate representation from the various fields and areas of the practice of pastoral counseling. Legislative appointments shall be made in accordance with G.S. 120-121.

(b) Of the members initially appointed, three members, including one certified fee-based practicing pastoral counselor appointed by the Governor, one certified fee-based pastoral counseling associate appointed by the Governor, and one public member who has no direct affiliation with the practice of pastoral counseling appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, shall serve for a term of two years. Two members, including one certified fee-based practicing pastoral counselor appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives and

one public member who has no direct affiliation with the practice of pastoral counseling appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, shall serve for a term of three years. Two members, including the certified fee-based practicing pastoral counselor appointed by the Governor and the certified fee-based practicing pastoral counselor appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, shall serve for a term of four years.

(c) After the initial terms specified in this section, each member shall be appointed to serve a term of four years or until a successor is appointed and qualified. A vacancy shall be filled by the appointing authority originally filling that position, except that any vacancy in appointments by the General Assembly shall be filled in accordance with G.S. 120-122. No person may be appointed more than once to fill an unexpired term nor to more than two consecutive terms.

(d) The Governor may remove any member of the Board for neglect of duty, malfeasance, conviction of a felony or conviction of a crime involving moral turpitude while in office, but for no other reason.

(e) Five Board members shall constitute a quorum. The Governor shall designate one Board member who is a certified fee-based practicing pastoral counselor to serve as chairperson during the term of his or her appointment to the Board. No person may serve as chairperson for more than four years. The Board shall specify the location of its principal office.

(f) The Board shall meet at least annually at a time set by the Board. The Board may hold additional meetings and conduct any proceeding or investigation necessary to its purposes and may empower its agents or counsel to conduct any investigation necessary to its purposes. The Board may order that any records concerning the provision of pastoral counseling services relevant to a complaint received by the Board or any inquiry or investigation conducted by or on behalf of the Board be produced for inspection and copying by representatives of the Board. The Board shall adopt an official seal, which shall be affixed to all certificates issued by the Board. The Board shall adopt rules necessary to conduct its business, carry out its duties, and administer this Article in accordance with Chapter 150B of the General Statutes.

(g) Board members shall receive no compensation for their services, but may be compensated for their expenses incurred in the performance of duties required by this Article, as provided in G.S. 138-6, from funds generated by examination fees or from contributions made to the Board. The Board may employ and compensate necessary personnel for the performance of its functions.

within the limits of funds available to the Board. In no event shall the State be liable for expenses incurred by the Board in excess of the income derived from this Article.

" § 90-356. Annual report.

Within 90 days of the end of each fiscal year, beginning with fiscal year 1992-93, the Board shall submit to the Governor a report of the Board's activities since the preceding July 1, including the names of all fee-based practicing pastoral counselors and fee-based pastoral counseling associates to whom certificates have been granted under this Article during that fiscal year.

" § 90-357. Certification and examination.

(a) The Board shall issue a certificate to practice fee-based pastoral counseling to an applicant who:

- (1) Pays an application fee of one hundred dollars (\$100.00);
- (2) Pays an examination fee set by the Board of not more than four hundred dollars (\$400.00);
- (3) Passes a Board examination in pastoral counseling;
- (4) Submits evidence verified by oath and satisfactory to the Board that the applicant:
 - a. Is at least 21 years of age;
 - b. Is of good moral character;
 - c. Has received a masters of divinity or higher degree, or its equivalent, from an accredited educational institution;
 - d. Has received a masters or doctoral degree in pastoral counseling, or its equivalent, based on a planned and directed program of studies in pastoral counseling from an accredited educational institution; has completed satisfactorily one unit of full-time clinical pastoral education in a program accredited by the Association of Clinical Pastoral Education, or its equivalent; and has completed at least 1,375 hours of pastoral counseling while receiving a minimum of 250 hours of supervision during those hours of pastoral counseling;
 - e. Is a member of a recognized denomination or faith group that recognizes the applicant's status as a rabbi, priest, minister, or religious leader; as defined in the Federal Internal Revenue Code.
 - f. Has completed three years of full-time work as a rabbi, priest, minister, or religious leader, or its equivalent;
 - g. Has been ordained, or its equivalent as determined by the applicant's denomination or faith group, and has been endorsed to function as a pastoral counselor; and
 - h. Has not within the preceding six months failed an examination given by the Board.

(b) The Board shall issue a certificate to practice as a fee-based pastoral counseling associate to an applicant who:

- (1) Pays an application fee of one hundred dollars (\$100.00);
- (2) Pays an examination fee set by the Board of not more than four hundred dollars (\$400.00);
- (3) Passes an examination in pastoral counseling satisfactory to the Board;
- (4) Submits evidence verified by oath and satisfactory to the Board that the applicant:
 - a. Is at least 21 years of age;
 - b. Is of good moral character;
 - c. Has received a masters of divinity or higher degree, or its equivalent, from an accredited educational institution;
 - d. Is a member of a recognized denomination or faith group that recognizes the applicant's status as a rabbi, priest, minister, or religious leader;
 - e. Has completed three years of full-time work as a rabbi, priest, minister, or religious leader, or its equivalent;
 - f. Has been ordained, or its equivalent as determined by the applicant's denomination or faith group, and has been endorsed to function as a pastoral counselor;
 - g. Has not within the preceding six months failed an examination given by the Board; and
 - h. Has satisfactorily completed one unit of full-time clinical pastoral education in a program accredited by the American Association for Clinical Education, or its equivalent, and has completed at least 375 hours of pastoral counseling including a minimum of 125 hours of supervision of those pastoral counseling hours.

(c) A pastoral counseling associate may become a certified fee-based practicing pastoral counselor if the applicant complies with the requirements set forth in subsection (a) of this section and pays an examination fee set by the Board of not more than four hundred dollars (\$400.00).

(d) The examinations required by subsections (a) and (b) of this section shall be in a form and content prescribed by the Board and shall be oral and written. The examinations shall be administered at least annually at a time and place to be determined by the Board.

" § 90-358. Equivalent certification and memberships recognized.

(a) The Board may grant a certificate as a fee-based practicing pastoral counselor to any person meeting the requirements of G.S. 90-357(a) who at the time of application is certified as a pastoral counselor by a board of another state whose standards, in the opinion of the Board, are at least equal to those required by this Article. This

section applies only when the state grants similar privileges to residents of this State. To determine a candidate's qualifications, the Board may require a personal interview and any other documentation the Board deems necessary.

(b) The Board may grant a certificate as a practicing pastoral counselor to any person who has been certified as a Fellow or Diplomate by the American Association of Pastoral Counselors if application is made by December 31, 1991. To determine a candidate's qualifications the Board may require a personal interview and any other documentation the Board deems necessary.

(c) The Board may grant a certificate as a fee-based pastoral counseling associate to any person who has been certified as a member of the American Association of Pastoral Counselors if application is made by December 31, 1991. To determine a candidate's qualifications, the Board may require a personal interview and any other documentation the Board deems necessary.

" § 90-359. *Renewal of certificate.*

A certificate issued under this Article must be renewed annually on or before the first day of January of each year. Each application for renewal must be accompanied by a renewal fee set by the Board of not more than one hundred dollars (\$100.00). If a certificate is not renewed on or before the first day of January of each year, an additional fee of not more than twenty-five dollars (\$25.00) as set by the Board shall be charged for late renewal. The Board may establish requirements for continuing education for pastoral counselors and pastoral counseling associates certified in this State as an additional condition for renewal.

" § 90-360. *Refusal, suspension, or revocation of a certificate.*

(a) A certificate applied for or issued under this Article may be refused, suspended, revoked, or otherwise limited as provided in subsection (e) of this section by the Board upon proof that the applicant or person to whom a certificate was issued:

- (1) Has been convicted of a felony;
- (2) Has been convicted of a misdemeanor involving moral turpitude, misrepresentation or fraud in dealing with the public, or an offense relevant to fitness to practice certified fee-based pastoral counseling;
- (3) Has engaged in fraud or deceit in securing or attempting to secure a certificate or the renewal of a certificate or has willfully concealed from the Board material information in connection with application for or renewal of a certificate under this Article;
- (4) Is a habitual drunkard or is addicted to deleterious habit-forming drugs;

- (5) Has made fraudulent or misleading statements pertaining to his education, licensure, professional credentials, or related to his qualification or fitness for the practice of pastoral counseling;
- (6) Has had a license for the practice of pastoral counseling in any other state or any other country suspended or revoked;
- (7) Has been guilty of unprofessional conduct as defined by the relevant code of ethics published by the American Association of Pastoral Counselors; or
- (8) Has violated any provision of this Article or the rules of the Board.

(b) A certificate issued under this Article shall be automatically suspended by the Board after failure to renew a certificate for a period of more than three months after the annual renewal date.

(c) Except as otherwise provided in this Article, the procedure for revocation, suspension, refusal, or other limitations of the certificate shall be in accordance with the provisions of Chapter 150B of the General Statutes. In any proceeding or record of any hearing before the Board, and in any complaint or notice of charges against any certified fee-based pastoral counselor or certified fee-based pastoral counseling associate and in any decision rendered by the Board, the Board shall endeavor to withhold from public disclosure the identity of any counselees or clients who have not consented to the public disclosure of treatment by the certified fee-based pastoral counselor or certified fee-based pastoral counseling associate. The Board may close a hearing to the public and receive in executive session evidence concerning the treatment or delivery of pastoral counseling services to a counselee or a client who has not consented to public disclosure of treatment or services, as may be necessary for the protection of the counselee's or client's rights and the full presentation of relevant evidence. All records, papers, and documents containing information collected and compiled by or on behalf of the Board as a result of investigations, inquiries, or interviews conducted in connection with certification or disciplinary matters are not public records within the meaning of Chapter 132 of the General Statutes. However, any notice or statement of charges against any certified fee-based pastoral counselor or certified fee-based pastoral counseling associate, any notice to any certified fee-based pastoral counselor or certified fee-based pastoral counseling associate of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding is a public record within the meaning of Chapter 132 of the General Statutes, except that identifying information concerning the treatment or delivery of services to a counselee or client who has not consented to the public disclosure of such treatment or services may be deleted.

Any record, paper, or other document containing information collected and compiled by or on behalf of the Board, as provided in this section, that is received and admitted in evidence in any hearing before the Board shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment or delivery of pastoral counseling services to a counselee or client who has not consented to public disclosure of the treatment or services.

(d) The Board may reinstate a suspended certificate upon payment by an applicant of a fee of twenty dollars (\$20.00), and may require that the applicant file a new application, submit to reexamination for reinstatement, and pay other authorized fees as required by the Board.

(e) Upon proof that a certified fee-based pastoral counselor or certified fee-based pastoral counseling associate certified under this Article has engaged in any of the prohibited actions specified in subsection (a) of this section, the Board may, in lieu of refusal, suspension, or revocation, do any one or more of the following:

- (1) Issue a formal reprimand;
- (2) Formally censure the certified fee-based pastoral counselor or certified fee-based pastoral counseling associate;
- (3) Place the certified fee-based pastoral counselor or certified fee-based pastoral counseling associate on probation with any conditions the Board may deem advisable; or
- (4) Limit or circumscribe the professional pastoral counseling services provided by the certified fee-based pastoral counselor or the certified fee-based pastoral counseling associate as the Board deems advisable.

(f) The Board may impose conditions of probation or restrictions on continued practice at the conclusion of a period of suspension or as a condition for the restoration of a revoked or suspended certificate. In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relating to the discipline, censure, proceeding costs, probation, or limitations on the practice of a certified fee-based pastoral counselor or a certified fee-based pastoral counseling associate.

" § 90-361. Prohibited acts.

No person shall represent himself to be a certified fee-based practicing pastoral counselor or a certified fee-based pastoral counseling associate, or engage in or offer to engage in the practice of certified fee-based pastoral counseling, without a valid certificate issued under this Article. No person shall use these titles or descriptions, or any of their derivatives, in a manner that implies the person is certified under this Article. No called or elected pastor

during his active full-time pastorate shall practice as a certified fee-based pastoral counselor even if certified under this Article.

" § 90-362. *Disposition of fees.*

The fees derived from the operation of this Article shall be used by the Board in carrying out its functions. The operations of the Board are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

" § 90-363. *Injunction for violations.*

The Board may apply to superior court for an injunction to prevent violations of this Article or of any rules adopted by the Board, and the court has the authority to grant an injunction.

" § 90-364. *Duplicate and replacement certificates.*

A certified fee-based pastoral counselor may request that the Board issue a duplicate or replacement certificate for a fee set by the Board not to exceed fifty dollars (\$50.00). Upon receipt of the request, a showing of good cause for the issuance of a duplicate replacement certificate, and payment of the fee, the Board shall issue a duplicate or replacement certificate.

" § 90-365. *Practice of medicine and psychology not authorized.*

Nothing in this Article shall authorize the practice of medicine as defined in Article 1 of this Chapter or the practice of psychology as defined in Article 18A of this Chapter.

" § 90-366. *Third-party reimbursement.*

Nothing in this Article shall be construed to authorize or require direct third-party reimbursement to persons certified under this Article."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

H.B. 1160

CHAPTER 671

AN ACT TO REPEAL THE NONRESIDENT BEAR HUNTING LICENSE REQUIREMENT IN ORDER TO PROMOTE RECIPROCITY WITH THE STATE OF TENNESSEE AND TO LIMIT THE USE OF FISH TRAPS TO TAKE NONGAME FISH IN INLAND FISHING WATERS IN CERTAIN COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-270.3(b)(2) is repealed.

Sec. 2. It is unlawful to use a trap larger than two feet in height, two feet in width, or five feet in length as a special device to take nongame fish from inland fishing waters or to use a wing or lateral device, whether attached or not, in conjunction with a trap to

guide, direct, or herd fish into the trap. It is unlawful for a person who is licensed to use traps in taking nongame fish from inland waters for sale to place or maintain more than 10 traps in inland waters at a time, whether at one or several locations. Violation of this section is a misdemeanor punishable by a fine of not less than five hundred dollars (\$500.00), imprisonment for not more than six months, or both.

Sec. 3. Section 2 of this act becomes effective October 1, 1991, and applies only to the counties of Anson, Cabarrus, Montgomery, Richmond, and Stanly. The remaining sections of this act become effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

H.B. 64

CHAPTER 672

AN ACT TO CONSOLIDATE AND SIMPLIFY THE SPECIAL LICENSE PLATE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-80 through G.S. 20-81.2 and G.S. 20-81.4 through G.S. 20-81.11 are repealed.

Sec. 2. Chapter 20 of the General Statutes is amended by adding the following new sections to Part 5 of Article 3 of that Chapter to read:

" § 20-79.4. Special registration plates.

(a) Types. -- Upon application and payment of the required registration fees, a person may obtain from the Division a special registration plate for a motor vehicle registered in that person's name if the person qualifies for the registration plate. The Division shall issue the following types of special registration plates:

- (1) Administrative Officer of the Courts. -- Issuable to the Director of the Administrative Office of the Courts. The plate shall bear the phrase 'J-20'.
- (2) Amateur Radio Operator. -- Issuable to an amateur radio operator who holds an unexpired and unrevoked amateur radio license issued by the Federal Communications Commission and who asserts to the Division that a portable transceiver is carried in the vehicle. The plate shall bear the phrase 'Amateur Radio.' The plate shall bear the operator's official amateur radio call letters, or call letters with numerical or letter suffixes so that an owner of more than one vehicle may have the call letters on each.

- (3) Civil Air Patrol Member. -- Issuable to an active member of the North Carolina Wing of the Civil Air Patrol. The plate shall bear the phrase 'Civil Air Patrol'. A plate issued to an officer member shall begin with the number '201' and the number shall reflect the seniority of the member; a plate issued to an enlisted member, a senior member, or a cadet member shall begin with the number '501'.
- (4) Class D Citizen's Radio Station Operator. -- Issuable to a Class D citizen's radio station operator licensed by the Federal Communications Commission. The plate shall bear the operator's official Class D citizen's radio station call letters.
- (5) Clerk of Superior Court. -- Issuable to a clerk of superior court. The plate shall bear the phrase 'Clerk Superior Court' and the letter 'C' followed by a number that indicates the county the clerk serves.
- (6) Coast Guard Auxiliary Member. -- Issuable to an active member of the United States Coast Guard Auxiliary. The plate shall bear the phrase 'Coast Guard Auxiliary'.
- (7) Congressional Medal of Honor Recipient. -- Issuable to a recipient of the Congressional Medal of Honor.
- (8) Disabled Veteran. -- Issuable to a veteran of the armed forces of the United States who suffered a 100% service-connected disability.
- (9) District Attorney. -- Issuable to a North Carolina or United States District Attorney. The plate issuable to a North Carolina district attorney shall bear the letters 'DA' followed by a number that represents the prosecutorial district the district attorney serves. The plate for a United States attorney shall bear the phrase 'U.S. Attorney' followed by a number that represents the district the attorney serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.
- (10) Fire Department or Rescue Squad Member. -- Issuable to an active regular member or volunteer member of a fire department, rescue squad, or both a fire department and rescue squad. The plate shall bear the words 'Firefighter', 'Rescue Squad', or 'Firefighter-Rescue Squad'.
- (11) Historic Vehicle Owner. -- Issuable for a motor vehicle that is at least 35 years old measured from the date of manufacture. The plate for a vehicle that is 35 to 50 years old shall bear the phrase 'Antique'. The plate for a vehicle

- that is at least 50 years old shall bear the phrase 'Horseless Carriage'.
- (12) Honorary Plate. -- Issuable to a member of the Honorary Consular Corps, who has been certified by the U. S. State Department, the plate shall bear the words 'Honorary Consular Corps' and a distinguishing number based on the order of issuance.
- (13) Judge or Justice. -- Issuable to a sitting or retired judge or justice in accordance with G.S. 20-79.6.
- (14) Legislator. -- Issuable to a member of the North Carolina General Assembly. The plate shall bear the words 'Senate' or 'State House' followed by the Senator's or Representative's assigned seat number.
- (15) Marshal. -- Issuable to a United States Marshal. The plate shall bear the phrase 'U.S. Marshal' followed by a number that represents the district the Marshal serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.
- (16) Military Reservist. -- Issuable to a member of a reserve component of the armed forces of the United States. The plate shall bear the name and insignia of the appropriate reserve component. Plates shall be numbered sequentially for members of a component with the numbers 1 through 5000 reserved for officers, without regard to rank.
- (17) National Guard Member. -- Issuable to an active or a retired member of the North Carolina National Guard. The plate shall bear the phrase 'National Guard'. A plate issued to an active member shall bear a number that reflects the seniority of the member; a plate issued to a commissioned officer shall begin with the number '1'; a plate issued to a noncommissioned officer with a rank of E7, E8, or E9 shall begin with the number '1601'; a plate issued to an enlisted member with a rank of E6 or below shall begin with the number '3001'. The plate issued to a retired or separated member shall indicate the member's retired status.
- (18) Partially Disabled Veteran. -- Issuable to a veteran of the armed forces of the United States who suffered a service connected disability of less than 100%.
- (19) Pearl Harbor Survivor. -- Issuable to a veteran of the armed forces of the United States who was present at and survived the attack on Pearl Harbor on December 7, 1941. The plate will bear the phrase 'Pearl Harbor Survivor' and the insignia of the Pearl Harbor Survivors' Association.

- (20) Personalized. -- Issuable to the registered owner of a motor vehicle. The plate will bear the letters or letters and numbers requested by the owner. The Division may refuse to issue a plate with a letter combination that is offensive to good taste and decency. The Division may not issue a plate that duplicates another plate.
- (21) Prisoner of War. -- Issuable to a member or veteran member of the armed forces of the United States who has been captured and held prisoner by forces hostile to the United States while serving in the armed forces.
- (22) Purple Heart Recipient. -- Issuable to a recipient of the Purple Heart award. The plate shall bear the phrase 'Purple Heart Veteran, Combat Wounded' and the letters 'PH'.
- (23) State Government Official. -- Issuable to elected and appointed members of State government in accordance with G.S. 20-79.5.
- (24) Street Rod Owner. -- Issuable to the registered owner of a modernized private passenger motor vehicle manufactured prior to the year 1949 or designed to resemble a vehicle manufactured prior to the year 1949. The plate shall bear the phrase 'Street Rod'.
- (25) Transportation Personnel. -- Issuable to various members of the Divisions of the Department of Transportation. The plate shall bear the letters 'DOT' followed by a number from 1 to 85, as designated by the Governor.
- (26) U.S. Representative. -- Issuable to a United States Representative for North Carolina. The plate shall bear the phrase 'U.S. House' and shall be issued on the basis of Congressional district numbers.
- (27) U.S. Senator. -- Issuable to a United States Senator for North Carolina. The plates shall bear the phrase 'U.S. Senate' and shall be issued on the basis of seniority represented by the numbers 1 and 2.

(b) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. The annual fee for a special plate issuable to an active member of the national guard is the amount of the regular motor vehicle registration fee. The annual fee for a personalized plate issued under this section is the amount of the regular motor vehicle registration fee plus an additional twenty dollars (\$20.00). The annual fee for any other special plate listed in this section is the regular motor vehicle registration fee plus an additional ten dollars (\$10.00).

The Division shall credit one-half of the revenue derived from the additional fee collected for a personalized plate to the Recreation and Natural Heritage Trust Fund established under G.S. 113-77.7. The Division shall credit the remaining revenue derived from the additional fee collected for a personalized plate and all of the additional fee collected for any other special plate to the Special Registration Plate Fund.

(c) Disqualification. -- A holder of a special license plate who becomes ineligible for the plate, for whatever reason, shall return the special plate within 30 days.

" § 20-79.5. Special registration plates for elected and appointed State government officials.

(a) Plates. -- The State government officials listed in this section are eligible for a special registration plate under G.S. 20-79.4. The plate shall bear the number designated in the following table for the position held by the official.

<u>Position</u>	<u>Number on Plate</u>
<u>Governor</u>	<u>1</u>
<u>Lieutenant Governor</u>	<u>2</u>
<u>Speaker of the House of Representatives</u>	<u>3</u>
<u>President Pro Tempore of the Senate</u>	<u>4</u>
<u>Secretary of State</u>	<u>5</u>
<u>State Auditor</u>	<u>6</u>
<u>State Treasurer</u>	<u>7</u>
<u>Superintendent of Public Instruction</u>	<u>8</u>
<u>Attorney General</u>	<u>9</u>
<u>Commissioner of Agriculture</u>	<u>10</u>
<u>Commissioner of Labor</u>	<u>11</u>
<u>Commissioner of Insurance</u>	<u>12</u>
<u>Speaker Pro Tempore of the House</u>	<u>13</u>
<u>Legislative Administrative Officer</u>	<u>14</u>
<u>Secretary of Administration</u>	<u>15</u>
<u>Secretary of Environment, Health, and</u>	
<u>Natural Resources</u>	<u>16</u>
<u>Secretary of Revenue</u>	<u>17</u>
<u>Secretary of Human Resources</u>	<u>18</u>
<u>Secretary of Economic and Community</u>	
<u>Development</u>	<u>19</u>
<u>Secretary of Correction</u>	<u>20</u>
<u>Secretary of Cultural Resources</u>	<u>21</u>
<u>Secretary of Crime Control and Public</u>	
<u>Safety</u>	<u>22</u>

Governor's Staff	23-29
State Budget Officer	30
State Personnel Director	31
Advisory Budget Commission	
Nonlegislative Member	32-41
Chair of the State Board of Education	42
President of the U.N.C. System	43
Alcoholic Beverage Control Commission	44-46
Assistant Commissioners of Agriculture	47-48
Deputy Secretary of State	49
Deputy State Treasurer	50
Assistant State Treasurer	51
Deputy Commissioner for the Department of Labor	52
Chief Deputy for the Department of Insurance	53
Assistant Commissioner of Insurance	54
Deputies and Assistant to the Attorney General	55-65
Board of Economic Development	
Nonlegislative Member	66-88
State Ports Authority	
Nonlegislative Member	89-96
Utilities Commission Member	97-104
Parole Commission Member	105-109
State Board Member, Commission Member, or State Employee Not Named in List	110-200

(b) Designation. -- When the table in subsection (a) designates a range of numbers for certain officials, the number given an official in that group shall be assigned. The Governor shall assign a number for members of the Governor's staff, nonlegislative members of the Advisory Budget Commission, nonlegislative members of the Board of Economic Development, nonlegislative members of the State Ports Authority, members of State boards and commissions, and for State employees. The Attorney General shall assign a number for the Attorney General's deputies and assistants.

The first number assigned to the Alcoholic Beverage Control Commission is reserved for the Chair of that Commission. The remaining numbers shall be assigned to the Alcoholic Beverage Control Commission members on the basis of seniority. The first number assigned to the Utilities Commission is reserved for the Chair of that Commission. The remaining numbers shall be assigned to the Utilities Commission members on the basis of seniority. The first number assigned to the Parole Commission is reserved for the Chair

of that Commission. The remaining numbers shall be assigned to the Parole Commission members on the basis of seniority.

" § 20-79.6. Special registration plates for members of the judiciary.

(a) Appellate Division. -- A special plate issued to a Justice or Judge of the North Carolina Appellate Courts shall bear the letter 'J' followed by a number from 1 through 19. The Chief Justice of the Supreme Court of North Carolina shall be issued the plate bearing the number 1 and the remaining plates shall be issued to the Associate Justices on the basis of seniority. The Chief Judge of the North Carolina Court of Appeals shall be issued the next judicial plate and the remaining plates shall be issued to the Associate Judges on the basis of seniority. Special plates issued to retired members of the Supreme Court and the Court of Appeals shall bear a number indicating the member's position of seniority at the time of retirement followed by the letter 'X' to indicate the member's retired status.

(b) Superior Court. -- A special plate issued to a resident superior court judge shall bear the letter 'J' followed by a number indicative of the judicial district the judge serves. The number issued to the senior resident superior court judge shall be equal to the sum of the numerical designation of the judge's judicial district, as defined in G.S. 7A-41.1(a)(1), plus 20. If a district has more than one regular resident superior court judge, a special plate for a resident superior court judge of that district shall bear the number issued to the senior resident superior court judge followed by a hyphen and a letter of the alphabet beginning with the letter 'A' to indicate the judge's seniority.

For a set of districts as defined in G.S. 7A-41.1(a)(2), other than 7A and 7C, the number issued to the senior resident superior court judge shall be equal to the sum of 20 plus the number the districts in the set have in common. A special plate issued to the other regular resident superior court judges of the set of districts shall bear the number issued to the senior resident superior court judge followed by a hyphen and a letter of the alphabet beginning with the letter 'A' to indicate the judge's seniority among all of the regular resident superior court judges of the set of districts. The letter assigned to a resident superior court judge will not necessarily correspond with the letter designation of the district the judge serves. For the set of districts 7B and 7C, the senior resident superior court judge for that set shall be issued a special plate bearing the designation 27C following the letter 'J', and all other resident superior court judges of the set shall be issued a special plate bearing that designation followed by the letter 'B'.

A special judge, emergency judge, or retired judge of the superior court shall be issued a special plate bearing the letter 'J' followed by a number designated by the Administrative Office of the Courts with the

approval of the Chief Justice of the Supreme Court of North Carolina. The plate for a retired judge shall have the letter 'X' after the designated number to indicate the judge's retired status.

(c) District Court. -- A special plate issued to a North Carolina district court judge shall bear the letter 'J' followed by a number. For the chief judge of the district court district, the number shall be equal to the sum of the numerical designation of the district court district the chief judge serves, plus 100. The number for all other judges of the district courts serving within the same district court district shall be the same number as appears on the special plate issued to the chief district judge followed by a letter of the alphabet beginning with the letter 'A' to indicate the judge's seniority. A retired district court judge shall be issued a similar plate except that the numerical designation shall be followed by the letter 'X' to indicate the judge's retired status.

(d) United States. -- A special plate issued to a Justice of the United States Supreme Court, a Judge of the United States Circuit Court of Appeals, or a District Judge of the United States District Court residing in North Carolina shall bear the words 'U.S. J' followed by a number beginning with '1'. The number shall reflect the judge's seniority based on continuous service as a United States Judge as designated by the Secretary of State. A judge who has retired or taken senior status shall be issued a similar plate except that the number shall be based on the date of the judge's retirement or assumption of senior status and shall follow the numerical designation of active justices and judges."

Sec. 3. G.S. 20-81.3 is recodified as G.S. 20-79.7 and reads as rewritten:

"§ ~~20-81.3~~, 20-79.7. ~~Special personalized registration plates.~~
~~Registration Plate Fund.~~

(a) ~~The Commissioner may promulgate rules on the issuance of special personalized registration plates to the owner of private passenger motor vehicles, private trucks, or commercial motor vehicles weighing 5,000 pounds or more gross weight, in lieu of other number plates. Such personalized registration plate shall be of such design and shall bear such letter or letters and numerals as the Commissioner shall prescribe, but there shall be no duplication of a registration plate. The Commissioner shall in his discretion refuse the issue of such letter combinations which might carry connotations offensive to good taste and decency.~~ Fund. -- The Special Registration Plate Fund is established. The Fund consists of the revenue derived from one-half of the additional fee collected for a personalized registration plate and all of the additional fee collected for any other special registration plate issued under G.S. 20-79.4. The

Commissioner shall deduct the costs of the registration plates, including the costs of issuing, handling, and advertising the availability of the special plates from the Fund.

~~(b) An owner who desires personalized registration plates shall make application for such plates on forms which shall be provided by the Division of Motor Vehicles and pay the sum of twenty dollars (\$20.00) annually, which shall be in addition to the regular motor vehicle registration fee. Once an owner has obtained personalized plates, he, where possible, will have first priority on those plates for the following years provided he makes timely and appropriate application; provided, however, that the Commissioner shall not issue a personalized license plate pursuant to this section except upon written application therefor on a form furnished by the Commissioner in which the applicant certifies that his operator's or chauffeur's license has not been revoked or suspended under Article 2 of Chapter 20 of the General Statutes within two years prior to the date of the application; and provided, further, that any personalized license plate issued pursuant to this section shall be cancelled and recalled by the Commissioner and the application fee forfeited in the event that the Commissioner determines that a false application has been submitted.~~
Initial Distribution of Proceeds. -- After deducting the costs of the special registration plates from the Fund, the Secretary of Transportation may allocate and reserve up to one hundred thousand dollars (\$100,000) to the Department of Transportation each fiscal year for the purpose of traffic control at major events as provided for by G.S. 136-44.2. Any funds allocated for traffic control that are neither used nor obligated at the end of the fiscal year shall remain in the Fund and be used in accordance with subsection (c) of this section.

~~(c) One-half of the revenue derived from the additional fee shall be deposited in the Recreation and Natural Heritage Trust Fund established under G.S. 113-77.7. The remaining one-half of the revenue derived from the additional fee for the special personalized registration plates shall be placed in a separate fund designated the "Personalized Registration Plate Fund". After deducting the cost of the plates, plus budgetary requirements for advertising, handling, and issuance to be determined by the Commissioner, the revenue in the~~
Personalized Registration Plate Use of Remaining Proceeds. -- The remaining revenue in the Fund shall be transferred quarterly as follows:

- (1) Thirty-three percent (33%) to the account of the Department of Economic and Community Development to aid in financing out-of-state print and other media advertising

under the program for the promotion of travel and industrial development in this State.

- (2) Fifty percent (50%) to the Department of Transportation to be used solely for the purpose of beautification of highways other than those designated as interstate. These funds shall be administered by the Department of Transportation for beautification purposes not inconsistent with good landscaping and engineering principles.
- (3) Seventeen percent (17%) to the account of the Department of Human Resources to promote travel accessibility for disabled persons in this State. These funds shall be ~~used~~; used to collect and update site information on travel attractions designated by the Department of Economic and Community Development in its ~~publications~~; publications, to provide technical assistance to travel attractions concerning accommodation of disabled ~~tourists~~; tourists, and to develop, print, and promote the publication ACCESS NORTH CAROLINA. ACCESS NORTH CAROLINA as provided in G.S.168-2. The Department of Human Resources shall make copies of ACCESS NORTH CAROLINA available to the Department of Economic and Community Development for its use in Welcome Centers and other appropriate Department of Economic and Community Development offices. Any funds allocated for these purposes that are neither spent nor obligated at the end of the fiscal year shall be transferred to the Department of Administration for removal of man-made barriers to disabled travelers at State-funded travel attractions. Guidelines for the removal of man-made barriers shall be developed in consultation with the Department of Human Resources.
- (4) ~~The Department of Economic and Community Development shall promote ACCESS NORTH CAROLINA in its publications (including providing a toll-free telephone line and an address for requesting copies of the publication) and provide technical assistance to the Department of Human Resources on travel attractions to be included in ACCESS NORTH CAROLINA. The Department of Economic and Community Development shall forward all requests for mailing ACCESS NORTH CAROLINA to the Department of Human Resources.~~
- (5) ~~Funds allocated by this subsection for promotion of travel accessibility and ACCESS NORTH CAROLINA which are not spent and are not obligated at the end of the fiscal year shall not revert but shall be transferred to the Department of~~

~~Administration for removal of man-made barriers to disabled travelers at State-funded travel attractions. Guidelines for the removal of man-made barriers shall be developed in consultation with the Department of Human Resources.~~

~~(d) Repealed by Session Laws 1975, c. 716, s. 5.~~

~~(e) Special personalized registration plate shall mean any registration plate bearing any combination of letters or numerals, or both, other than that which the Division determines would normally be issued sequentially to an applicant for original or renewal vehicle registration.~~

~~(f) In the event a personalized registration plate is lost, stolen or mutilated, the owner may not obtain another such plate bearing the same letter, letters or numerals until the next registration year. He may, upon proper application and payment of a fee of nine dollars (\$9.00), obtain a plate of the regular series. Provided, further, that a special personalized registration plate revoked for violation of the motor vehicle laws shall not be reissued, but in lieu thereof a plate of the regular series will be issued upon payment of the appropriate fee for the new registration plate.~~

~~(g) The Secretary of Transportation may allocate and reserve up to one hundred thousand dollars (\$100,000) to the Department of Transportation each fiscal year from the "Personalized Registration Plate Fund", before any other transfers are made pursuant to subsection (c) of this section, for the purpose of traffic control at major events as provided for by G.S. 136-44.2. Any funds allocated pursuant to this subsection that are not used or obligated shall remain in the "Personalized Registration Plate Fund" for use for the fund's other purposes."~~

Sec. 4. G.S. 168-2 reads as rewritten:

" § 168-2. *Right of access to and use of public places.*

Handicapped persons have the same right as the ablebodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and all other buildings and facilities, both publicly and privately owned, which serve the public. The Department of Human Resources shall develop, print, and promote the publication ACCESS NORTH CAROLINA. It shall make copies of the publication available to the Department of Economic and Community Development for its use in Welcome Centers and other appropriate Department of Economic and Community Development offices. The Department of Economic and Community Development shall promote ACCESS NORTH CAROLINA in its publications (including providing a toll-free telephone line and an address for requesting copies of the publication) and provide technical assistance to the Department of Human Resources on travel attractions to be included in ACCESS

NORTH CAROLINA. The Department of Economic and Community Development shall forward all requests for mailing ACCESS NORTH CAROLINA to the Department of Human Resources."

Sec. 5. G.S. 20-37.6(e) reads as rewritten:

"(e) Enforcement of Handicapped Parking Privileges. -- It shall be unlawful:

- (1) To park or leave standing any vehicle in a space designated with a sign pursuant to subsection (d) of this section for handicapped persons or visually impaired persons when the vehicle does not display the distinguishing license plate, placard, or identification card as provided in this section or a disabled veteran registration plate issued ~~pursuant to G.S. 20-81.4;~~ under G.S. 20-79.4;
- (2) For any person not qualifying for the rights and privileges extended to handicapped or visually impaired persons under this section to exercise or attempt to exercise such rights or privileges by the unauthorized use of a distinguishing license plate, placard, or identification card issued pursuant to the provisions of this section;
- (3) To park or leave standing any vehicle so as to obstruct a curb ramp or curb cut for handicapped persons as provided for by the North Carolina Building Code or as designated in G.S. 136-44.14;
- (4) For those responsible for designating parking spaces for the handicapped to erect or otherwise use signs not conforming to G.S. 20-37.6(d) for this purpose.

This section is enforceable in all public vehicular areas specified in G.S. 20-4.01(32)."

Sec. 6. G.S. 20-95 reads as rewritten:

" § 20-95. *Licenses for less than a year.*

(a) Except as provided in subsection (b) of this section, licenses issued on or after April 1 and before July 1 of each year shall be three fourths of the annual fee; licenses issued on or after July 1 and before October 1 shall be one half of the annual fee; and licenses issued on or after October 1 shall be one fourth of the annual fee.

(b) This section shall not apply to licenses issued pursuant to G.S. ~~20-65, 20-79.1, 20-79.2, 20-79.3, 20-81.2,~~ 20-84, 20-84.1, 20-87(9) through (10) and 20-88(c)."

Sec. 7. G.S. 20-66(b) reads as rewritten:

"(b) For the registration period beginning January 1, 1975, the Division, upon proper application for renewal of registration for private passenger motor vehicles, shall issue a new registration plate and registration card. For the registration period beginning January 1, 1976, and all subsequent registration periods, the Division, upon

application for renewal of registration, shall, in lieu of a new registration plate, issue one or more stickers, tabs or other suitable devices denoting the registration period for which issued; provided that for the registration periods beginning January 1, 1978, and thereafter, the Division may, as it deems advisable in the discretion of the Commissioner, issue new registration plates together with such stickers, tabs or other devices; ~~provided further, the provisions of this subsection shall not apply to special issue plates, including but not limited to official plates, legislator plates, civil air patrol plates and national guard plates, devices."~~

Sec. 8. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

H.B. 281

CHAPTER 673

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO ACQUIRE PROPERTY FOR NEW RAILROAD CORRIDORS AND TO ENTER INSTALLMENT CONTRACTS FOR THE PURCHASE OF RAILROAD CORRIDORS AND OTHER RAIL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-44.36B reads as rewritten:

"§ 136-44.36B. Power of Department to preserve and acquire railroad corridors.

In exercising its power to preserve railroad corridors, the Department of Transportation may acquire property for new railroad corridors and may acquire property that is or has been part of a railroad corridor and is not part of an existing, active railroad line by purchase, gift, condemnation, or other ~~method~~, method, provided that the Department may not condemn part of an existing, active railroad line. The procedures in Article 9 of this Chapter apply when the Department condemns property to preserve or acquire a railroad corridor."

Sec. 2. Article 2D of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-44.36C. Installment contracts authorized.

The Department of Transportation may purchase active or inactive railroad lines, corridors, rights-of-way, locomotives, rolling stock, and other rail property, both real and personal, by installment contracts which create in the property purchased a security interest to secure payment of the purchase money. No deficiency judgment may be rendered against the Department of Transportation in any action for

breach of a contractual obligation authorized by this section, and the taxing power of the State is not and may not be pledged directly or indirectly to secure any money due the seller."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

H.B. 547

CHAPTER 674

AN ACT TO PROVIDE FOR PAYMENT OF EXCESS DAMAGES AGAINST A STATE EMPLOYEE FOR COLLECTING OR ADMINISTERING AN UNCONSTITUTIONAL TAX.

The General Assembly of North Carolina enacts:

Section 1. Article 31A of Chapter 143 of the General Statutes is amended by adding at the end a new section to read:

"§ 143-300.9. Payment of excess damages relating to unconstitutional taxes.

In an action to which this Article applies, the State shall pay the excess amount of a judgment or settlement under G.S. 143-300.6 for damages against a State employee for collecting or administering a tax that is held unconstitutional. The excess amount is the amount of the judgment or settlement over (i) the limit provided in G.S. 143-300.6(a) and (ii) any coverage under G.S. 58-32-15. This section does not waive the sovereign immunity of the State with respect to any claim."

Sec. 2. G.S. 143-300.6 reads as rewritten:

"§ 143-300.6. Payments of judgments; compromise and settlement of claims.

(a) Payment of Judgments and Settlements. In an action to which this Article applies, the State shall pay (i) a final judgment awarded in a court of competent jurisdiction against a State employee or (ii) the amount due under a settlement of the action under this section. The unit of State government by which the employee was employed shall make the payment. This section does not waive the sovereign immunity of the State with respect to any claim. A payment of a judgment or settlement of a claim against a State employee or several State employees as joint tort-feasors may not exceed the amount payable for one claim under the Tort Claims Act. All final judgments awarded in courts of competent jurisdiction against State employees in actions or suits to which this Article applies, or any amounts payable under a settlement of such suits in accordance with this section, shall be paid by the department, agency, board, commission, institution, bureau or authority which employs or employed the State employee.

~~Nothing in this section shall be deemed to waive the sovereign immunity of the State with respect to a claim covered by this section. No payment of a judgment or settlement of a claim against a State employee or several State employees as joint tort-feasors shall exceed the amount payable for any one claim under the Tort Claims Act.~~

(b) Settlement of Claims. The Attorney General may compromise and settle any claim covered by this section to the extent ~~that he finds the same to be valid,~~ claim valid. A settlement in excess of the limit provided in subsection (a) must be approved by the employee. In an action in which the Attorney General has stated in writing that private counsel should be provided the employee because of a conflict of interest between the employee and the State, a settlement in excess of the limit provided in subsection (a) must be approved by the private counsel. ~~provided that no settlement of any such claim in an amount in excess of the limit provided in the Tort Claims Act shall be made without the approval of the employee. In a case wherein the Attorney General has stated in writing that private counsel ought to be provided because of a conflict with the interests of the State, the settlement in excess of the limit provided in the Tort Claims Act must be approved by the private counsel.~~

(c) Other Insurance. The coverage afforded employees and former employees under this Article shall be excess coverage over any commercial liability ~~insurance up to the limit of the Tort Claims Act,~~ insurance, other than insurance written under G.S. 58-32-15, up to the limit provided in subsection (a). ~~except that this subsection shall not apply to programs of insurance written under the authority of G.S. 143B-424.1; and programs of insurance written under G.S. 143B-424.1 shall not be deemed to be commercial liability insurance within the meaning of this section."~~

Sec. 3. G.S. 58-32-15(b) reads as rewritten:

"(b) The Commission, pursuant to this section, may acquire professional liability insurance covering the officers and employees, or any group thereof, of a department, institution or agency of State government or a community college or technical college only if the coverage to be provided by such the insurance policy is in excess of the protection provided by Articles 31 and 31A of General Statutes Chapter 143, Chapter 143 of the General Statutes, other than the protection provided by G.S. 143-300.9."

Sec. 4. This act is effective upon ratification and applies to payments made on or after the date of ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

H.B. 1303

CHAPTER 675

AN ACT TO ESTABLISH HOUSE OF REPRESENTATIVES DISTRICTS AND TO APPORTION SEATS IN THE HOUSE OF REPRESENTATIVES AMONG DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-2 reads as rewritten:

" § 120-2. *House apportionment specified.*

(a) For the purpose of nominating and electing members of the North Carolina House of Representatives in ~~1984~~ 1992 and periodically thereafter, the State of North Carolina shall be divided into the following districts with each District electing one Representative, except that Districts 4, 11, 12, 13, 14, 17, 18, 19, 22, 24, 41, 45, 46, 52, and 89 each elect two Representatives and except that Districts 23, 25, 40, 48, and 51 each elect three Representatives:

~~District 1 shall elect two Representatives and shall consist of Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans, and Tyrrell Counties; Holly Grove Township of Gates County; and Lees Mills, Plymouth, and Skiddersville Townships of Washington County.~~

~~District 2 shall elect one Representative and shall consist of Beaufort and Hyde Counties; and Scuppernon Township of Washington County.~~

~~District 3 shall elect three Representatives and shall consist of Craven, Lenoir, and Pamlico Counties.~~

~~District 4 shall elect three Representatives and shall consist of Carteret and Onslow Counties.~~

~~District 5 shall elect one Representative and shall consist of Northampton County; Indian Woods, Roxobel, Snake Bite, and Woodville Townships of Bertie County; Gatesville, Hall, Haslett, Hunters Mill, Mintonville, and Reynoldson Townships of Gates County; and Harrellsville, Maney's Neck, Murfreesboro, St. Johns, and Winton Townships of Hertford County.~~

~~District 6 shall elect one Representative and shall consist of Colerain, Merry Hill, Mitchells, Whites, and Windsor Townships of Bertie County; Ahoskie Township of Hertford County; Beargrass, Cross Roads, Giffins, Jamesville, Poplar Point, Williams, and Williamston Townships of Martin County; and Bethel and Carolina Townships of Pitt County.~~

~~District 7 shall elect one Representative and shall consist of Brinkleyville, Butterwood, Conococonnara, Enfield, Faucett, Halifax, Palmyra, Roseneath, Scotland Neck, and Weldon Townships of Halifax County; Goose Nest, Hamilton, and Robersonville Townships~~

~~of Martin County; and Fishing Creek, Fork, Sandy Creek, Shocco, and Warrenton Townships of Warren County.~~

~~District 8 shall elect three Representatives and shall consist of the remainders of Edgecombe, Nash, and Wilson Counties that are not included in District 70.~~

~~District 9 shall elect two Representatives and shall consist of Greene County; and Arthur, Ayden, Belvoir, Chicod, Falkland, Farmville, Fountain, Greenville, Grifton, Grimesland, Pactolus, Swift Creek, and Winterville Townships of Pitt County.~~

~~District 10 shall elect one Representative and shall consist of Duplin and Jones Counties.~~

~~District 11 shall elect two Representatives and shall consist of Wayne County.~~

~~District 12 shall elect two Representatives and shall consist of Bladen and Sampson Counties; and Burgaw, Caswell, Columbia, Holly, Canetuck, Grady, Long Creek, Rocky Point, and Union Townships of Pender County.~~

~~District 13 shall elect two Representatives and shall consist of Federal Point, Harnett, Masonboro, and Wilmington Townships of New Hanover County.~~

~~District 14 shall elect one Representative and shall consist of Brunswick County; Cape Fear Township of New Hanover County; and Topsail Township of Pender County.~~

~~District 15 shall elect one Representative and shall consist of Columbus County.~~

~~District 16 shall elect three Representatives and shall consist of Hoke and Robeson Counties; and Spring Hill, Stewartsville, and Williamsons Townships of Scotland County.~~

~~District 17 shall elect two Representatives and shall consist of Block 901 and Enumeration District 534 of Census Tract 34 in Manchester Township, Block 901 and Enumeration District 535 of Census Tract 34 in Seventy-First Township, Block 901 of Census Tract 34 in Carver's Creek Township, Cross Creek Precincts 1, 3, 5, 9, 13, 16, 17, and 19, Spring Lake Precinct, Morganton Road 1 Precinct, Beaver Lake Precinct, Westarea Precinct, and that part of Census Tract 33.02 in Precinct Seventy-First 1. Any part of Cross Creek Township which may be entirely surrounded by Morganton Road 1 Precinct shall also be in the District. Block 304 of Census Tract 26 of Cross Creek Township is not in the District.~~

~~District 18 shall elect three Representatives and shall consist of the remainder of Cumberland County not included in District 17.~~

~~District 19 shall elect two Representatives and shall consist of Harnett and Lee Counties.~~

~~District 20 shall elect two Representatives and shall consist of Franklin and Johnston Counties.~~

~~District 21 shall elect one Representative and shall consist of the following precincts of Wake County: Raleigh 14, 19, 20, 22, 25, 26, 28, 34, 35, 38, 40, and St. Matthews 3.~~

~~District 22 shall elect three Representatives and shall consist of Caswell, Granville, Person, and Vance Counties; Littleton and Roanoke Rapids Townships of Halifax County; and Hawtree, Judkins, Nutbush, River, Roanoke, Sixpound, and Smith Creek Townships of Warren County.~~

~~District 23 shall elect three Representatives and shall consist of Durham County.~~

~~District 24 shall elect two Representatives and shall consist of Orange County; and Baldwin, Cape Fear, Center, Hadley, Haw River, Hickory Mountain, Matthews, New Hope, Oakland, and Williams Townships of Chatham County.~~

~~District 25 shall elect four Representatives and shall consist of Alamance and Rockingham Counties; and Beaver Island and Snow Creek Townships of Stokes County.~~

~~District 26 shall elect one Representative and shall consist of Providence Township of Randolph County and Greensboro Precincts 5, 6, 7, 8, 19, 29, and 30, and Fentress Township of Guilford County.~~

~~District 27 shall elect three Representatives and shall consist of South Center Grove Precinct, Jamestown Precinct 2, North Madison Precinct, South Monroe Precinct, North Sumner Precinct, and Greensboro Precincts 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34, 35, 36 of Guilford County.~~

~~District 28 shall elect two Representatives and shall consist of Deep River Township, Friendship Township, High Point Township, Jamestown Precincts 1 and 3, and South Sumner Precinct of Guilford County.~~

~~District 29 shall elect one Representative and shall consist of Belews Creek and Salem Chapel Townships of Forsyth County and North Center Grove Precinct, South Madison Precinct, North Monroe Precinct and Bruce, Clay, Greene, Jefferson, Oak Ridge, Rock Creek and Washington Townships of Guilford County.~~

~~District 30 shall elect one Representative and shall consist of Albright, Bear Creek, and Gulf Townships of Chatham County; and Asheboro, Coleridge, Columbia, Franklinville, Liberty, and Randleman Townships of Randolph County.~~

~~District 31 shall elect one Representative and shall consist of Moore County.~~

~~District 32 shall elect one Representative and shall consist of Richmond County; and Laurel Hill Township of Scotland County.~~

~~District 33 shall elect one Representative and shall consist of Anson and Montgomery Counties.~~

~~District 34 shall elect four Representatives and shall consist of Cabarrus, Stanly, and Union Counties.~~

~~District 35 shall elect two Representatives and shall consist of Rowan County.~~

~~District 36 shall elect one Representative and shall consist of the following precincts of Mecklenburg County: Charlotte Precincts 6, 34, 62, 63, 83, 84, and 85, Clear Creek Precinct, Crab Orchard Precinct 1, Matthews Precinct, Mint Hill Precincts 1 and 2, and Morning Star Precinct.~~

~~District 37 shall elect three Representatives and shall consist of Davidson and Davie Counties; and Eagle Mills and Union Grove Townships of Iredell County.~~

~~District 38 shall elect one Representative and shall consist of Back Creek, Brower, Cedar Grove, Concord, Grant, Level Cross, New Hope, New Market, Pleasant Grove, Richland, Tabernacle, Trinity, and Union Townships of Randolph County.~~

~~District 39 shall elect three Representatives and shall consist of the remainder of Forsyth County not included in Districts 29, 66, or 67.~~

~~District 40 shall elect three Representatives and shall consist of Alleghany, Ashe, and Surry Counties; Big Creek, Danbury, Meadows, Peters Creek, Quaker Gap, Sauratown, and Yadkin Townships of Stokes County; and Bald Mountain, Blowing Rock, Blue Ridge, Boone, Brushy Fork, Cove Creek, Elk, Meat Camp, New River, North Fork, Stony Fork, and Watauga Townships of Watauga County.~~

~~District 41 shall elect two Representatives and shall consist of Wilkes and Yadkin Counties; and Gwaltneys, Sharpes, and Sugar Loaf Townships of Alexander County.~~

~~District 42 shall elect one Representative and shall consist of Bethany, Chambersburg, Concord, Cool Spring, New Hope, Olin, Sharpesburg, Statesville, and Turnersburg Townships of Iredell County.~~

~~District 43 shall elect one Representative and shall consist of Millers Township of Alexander County; Caldwell, Catawba, and Mountain Creek Townships of Catawba County; and Barringer, Coddle Creek, Davidson, Fallstown, and Shiloh Townships of Iredell County.~~

~~District 44 shall elect four Representatives and shall consist of Gaston and Lincoln Counties.~~

~~District 45 shall elect two Representatives and shall consist of Lower Fork and Upper Fork Townships of Burke County; and Bandy's, Clines, Hickory, Jacobs Fork, and Newton Townships of Catawba County.~~

~~District 46 shall elect three Representatives and shall consist of Avery, Caldwell, and Mitchell Counties; Ellendale, Little River, Taylorsville, and Wittenberg Townships of Alexander County; Drexel, Icard, Jonas Ridge, Lower Creek, Smoky Creek, and Upper Creek Townships of Burke County; and Beaverdam, Laurel Creek, and Shawneehaw Townships of Watauga County.~~

~~District 47 shall elect one Representative and shall consist of Linville, Lovelady, Morganton, Quaker Meadow, and Silver Creek Townships of Burke County.~~

~~District 48 shall elect three Representatives and shall consist of Cleveland, Polk, and Rutherford Counties.~~

~~District 49 shall elect one Representative and shall consist of McDowell and Yancey Counties.~~

~~District 50 shall elect one Representative and shall consist of Blue Ridge, Clear Creek, Edneyville, Green River, Hendersonville, and Mills River Townships of Henderson County.~~

~~District 51 shall elect four Representatives and shall consist of Buncombe and Transylvania Counties; and Crab Creek and Hoopers Creek Townships of Henderson County.~~

~~District 52 shall elect two Representatives and shall consist of Haywood, Jackson, Madison, and Swain Counties; and Stecoah and Yellow Creek Townships of Graham County.~~

~~District 53 shall elect one Representative and shall consist of Cherokee, Clay, and Macon Counties; and Cheoah Township of Graham County.~~

~~District 54 shall elect one Representative and shall consist of the following precincts of Mecklenburg County: Charlotte Precincts 5, 28, 29, 43, 44, and 60, Cornelius Precinct, Crab Orchard Precinct 2, Davidson Precinct, Huntersville Precinct, Lemly Precinct, and Mallard Creek Precincts 1 and 2.~~

~~District 55 shall elect one Representative and shall consist of the following precincts of Mecklenburg County: Charlotte Precincts 8, 9, 10, 19, 32, 48, 50, 57, 58, 59, 74, 75, 76, and 77, Pineville Precinct, and Steel Creek Precinct 2.~~

~~District 56 shall elect one Representative and shall consist of the following precincts of Mecklenburg County: Charlotte Precincts 20, 21, 37, 38, 49, 51, 52, 78, 79, and 80, Berryhill Precinct, Long Creek Precinct 1, Oakdell Precinct, Paw Creek Precincts 1 and 2, and Steel Creek Precinct 1.~~

~~District 57 shall elect one Representative and shall consist of the following precincts of Mecklenburg County: Charlotte Precincts 35, 36, 47, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 86, and 88, and Providence Precinct.~~

~~District 58 shall elect one Representative and shall consist of Charlotte Precincts 1, 2, 3, 4, 7, 13, 14, 15, 17, 18, 33, 45, 46, and 61 of Mecklenburg County.~~

~~District 59 shall elect one Representative and shall consist of the following precincts of Mecklenburg County: Charlotte Precincts 11, 16, 22, 23, 27, 31, 39, 41, 53, 81, and 89, and Long Creek Precinct 2, and from Precinct 42 it shall include only Blocks 104 and 105 of Census Tract 53.02.~~

~~District 60 shall elect one Representative and shall consist of Charlotte Precincts 12, 24, 25, 26, 30, 40, 54, 55, 56, and 82 of Mecklenburg County, and shall include all of Precinct 42 in Mecklenburg County except for Blocks 104 and 105 of Census Tract 53.02.~~

~~District 61 shall elect one Representative and shall consist of Barton's Creek Township and New Light Township of Wake County and the following precincts of Wake County: Raleigh 3, 4, 5, 10, 11, 12, 13, 15, 17, 18, 30, 33, 36, 37, 39, House Creek 4, and Leesville.~~

~~District 62 shall elect one Representative and shall consist of Buckhorn Township, Holly Springs Township, Middle Creek Township, Panther Branch Township, and White Oak Township of Wake County and the following precincts of Wake County: Cary 1, 4, and 7, St. Mary's 1 and 2, and St. Matthews 2 and 4, except that in St. Mary's 2, it does not include Blocks 112, 951 and 952 (outside Garner city limits) of Census Tract 528.05 of St. Mary's Township.~~

~~District 63 shall elect one Representative and shall consist of Cedar Fork Township of Wake County and the following precincts of Wake County: Cary 2, 3, and 5, House Creek 1, 2, and 3, Meredith and Raleigh 16, 29, 31, 32, and 41.~~

~~District 64 shall elect one Representative and shall consist of the following precincts of Wake County: Cary 6, Raleigh 1, 2, 6, 7, 8, 9, 21, 23, 24, 27, St. Mary's 3, 4, 5, and 6, and Swift Creek 1 and 2. It also includes from St. Mary's 2 Blocks 112, 951, and 952 (outside Garner city limits) of Census Tract 528.05 of St. Mary's Township.~~

~~District 65 shall elect one Representative and shall consist of Little River Township, Mark's Creek Township and Wake Forest Township of Wake County and the following precincts of Wake County: Raleigh 42, 43, 44, and 45, Neuse, and St. Matthews 1.~~

~~District 66 shall elect one Representative and shall consist of the following precincts of Forsyth County: 30-1, 40-1, 40-2, 40-3, 40-4,~~

~~40-5, 40-6, 50-1, 50-2, 50-3, 50-4, 50-5, 6-3, 8-2, and 8-3 but does not include that part of Block 314, Census Tract 33.03 of Winston Township which is not contiguous with the primary corporate limits of the City of Winston-Salem.~~

~~District 67 shall elect one Representative and shall consist of the following precincts of Forsyth County: 20-1, 20-2, 20-3, 20-4, 20-5, 20-6, 30-2, 30-3, 30-5, 30-6, 90-2, 90-3, 90-5, and 10-3.~~

~~District 70 shall elect one Representative and shall consist of the following:~~

~~(1) In Edgecombe County: Enumeration District 1154 of Census Tract 207 in Township 6 (Upper Fishing Creek); Census Tract 205 in Township 7 (Swift Creek); Enumeration Districts 1155, 1156, 1160, 1161, and 1162 of Census Tract 206 in Township 7 (Swift Creek); Census Blocks 101 through 106 and 121 through 128 in Census Tract 201 in the City of Rocky Mount in Township 12 (Rocky Mount); Census Blocks 112 through 139, Census Blocks 202 and 205 through 226, Census Block Group 3, and Census Block Group 4 of Census Tract 202 in the City of Rocky Mount in Township 12 (Rocky Mount); Census Block Group 1, Census Blocks 201 through 210 and 216 through 228, Census Blocks 301 through 318, 334, and 335, and Census Block Group 4 of Census Tract 204 in the City of Rocky Mount in Township 12 (Rocky Mount); Census Tracts 202, 203, 204, and 214 in Township 12 (Rocky Mount); Enumeration Districts 1191 and 1193 of Census Tract 213 in Township 12 (Rocky Mount); and Enumeration Districts 1223 and 1224 of Census Tract 202 and Enumeration Districts 1226A and 1226B of Census Tract 214 in Township 14 (Upper Town Creek).~~

~~(2) In Nash County: Census Tract 107 in North Whitakers Township; Census Block Groups 1, 2, and 3 and Census Blocks 403, 429, and 430 of Census Tract 102 in the City of Rocky Mount in Rocky Mount Township; and Census Tracts 106 and 107 in South Whitakers Township.~~

~~(3) In Wilson County: Enumeration District 743 of Census Tract 7 in Gardner Township; Enumeration Districts 700, 701, 702, 703A, and 703B of Census Tract 13 in Toisnot Township; Census Tract 2, Enumeration District 736A and Census Blocks 422, 423, and 424 of Census Tract 4, and Census Tracts 7, 8.01, and 8.02 in Wilson Township.~~

District 1: Camden County, Currituck County; Pasquotank County, Perquimans County; New Hope.

District 2: Beaufort County; Craven County; Epworth *, Vanceboro *; Hyde County; Pitt County; Chicod *, Grimesland *.

District 3: Craven County: Ernul *, Bridgeton *, Truitt *, Croatan *; Tract 9611: Block Group 1: Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 117, Block 118A, Block 118B, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127; Block Group 2: Block 201, Block 205, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 224, Block 225; Havelock *: Remainder not in District 79; Grantham *, Fourth Ward *, Rhems *: Tract 9604: Block Group 7: Block 704; River Bend *, Trent Woods *, Woodrow *; Pamlico County: Township 1, Township 2, Township 3, Township 4, Township 5: Tract 9501: Block Group 6: Block 636, Block 637, Block 638, Block 639, Block 642, Block 643, Block 644, Block 645, Block 646, Block 647, Block 648, Block 649, Block 650, Block 651, Block 652; Tract 9502: Block Group 1: Block 125C, Block 128B, Block 133B, Block 149C, Block 150, Block 151, Block 152, Block 153B, Block 154B, Block 155, Block 156; Block Group 4: Block 411B, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424; Block Group 6: Block 601C, Block 601D, Block 602A, Block 602C, Block 603B, Block 604, Block 605, Block 606, Block 607, Block 608, Block 609B, Block 642, Block 643, Block 644, Block 645, Block 649, Block 650.

District 4: Carteret County: Onslow County: New River *, Brynn Marr *, Gum Branch *, Richlands *, Sneads Ferry *, Swansboro *, Mills *, Mortons *, Northeast *, Camp Lejeune Military Base 10, Camp Lejeune Military Base 12, Camp Lejeune Military Base 13, Camp Lejeune Military Base 14, VTD ZZZZ.

District 5: Bertie County: Colerain 1, Indian Woods, Roxobel, Snakebite, Woodville, Mitchells 2; Gates County, Hertford County: Ahoskie 3, Cofield, Harrellsville, Maneys Neck, Millennium, Murfreesboro 1, Murfreesboro 2, St. John, Union, Winton; Northampton County.

District 6: Bertie County: Merry Hill, Mitchells 1, Whites, Windsor 1, Colerain 2, Windsor 2; Hertford County: Ahoskie 1, Ahoskie 2; Martin County: Bear Grass, Cross Roads, Griffins, Jamesville, Williams, Williamston # 1, Williamston # 2; Pitt County: Carolina *, Simpson *, Pactolus *, Greenville #8 *; Washington County: Plymouth #1 *, Plymouth #2 *, Plymouth #3 *.

District 7: Edgecombe County: Precinct 5-1 *, Precinct 6-1 *; Halifax County: Hollister *, Ringwood *, Butterwood *, Conoconnara *, Enfield #1 *, Enfield #2 *, Enfield #3 *, Faucett *, Halifax *, Littleton #1 *, Hobgood *, Palmyra *, Roanoke Rapids #7 *, Roanoke Rapids #9 *, Roseneath *, Scotland Neck #1 *, Scotland Neck #2 *, Weldon #1 *, Weldon #2 *, Weldon #3 *; Martin County: Goose Nest, Hassell, Hamilton, Poplar Point, VTD's not defined: Tract 9704: Block Group 2: Block 202; Tract 9705: Block Group 4: Block 413; Nash County: Castalia *, Griffins *, Mannings #1 *, No. Whitakers #1 *, No. Whitakers #2 *.

District 8: Edgecombe County: Precinct 1-1 *, Precinct 3-1 *, Precinct 4-1 *; Greene County: Arba, Bull Head, Carrs, Fort Run, Shine, Jason, Olds, Snow Hill Rural, Snow Hill Town, Snow Hill Town Sat B, Speights Bridge; Martin County: Robersonville # 1, Robersonville # 2, VTD's not defined: Tract 9706: Block Group 1: Block 168A; Pitt County: Belvoir *, Bethel *, Falkland *, Farmville West *, Fountain *, Greenville #1 *, Greenville #2, Greenville #3 *, Greenville #4 *, Greenville #5 *, Greenville #2 Noncontiguous.

District 9: Pitt County: Arthur *, Ayden West *, Ayden East *, Farmville East *, Grifton *, Swift Creek *, Winterville West *, Winterville East *, Greenville #6 *, Greenville #7 *, Greenville #9 *, Greenville #10 *, Greenville #11 *, Greenville #12 *, Greenville #13 *.

District 10: Duplin County, Onslow County: Harris Creek *, Haws Run *, Verona *, Camp Lejeune Military Base 2, Camp Lejeune Military Base 3, Camp Lejeune Military Base 4.

District 11: Johnston County: Bentonville *; Wayne County.

District 12: Bladen County; Onslow County: Folkstone *, Holly Ridge *, Camp Lejeune Military Base 1; Pender County, Sampson County.

District 13: New Hanover County: Cape Fear #3 *, Federal Point #1 *, Federal Point #2 *, Federal Point #3 *, Wrightsville Beach *, Harnett #2 *, Harnett #3 *, Harnett #4 *, Harnett #5 *, Harnett #6 *, Harnett #7 *, Masonboro #2 *, Masonboro #3 *, Masonboro #4 *, Masonboro #5 *, Wilmington #1 *, Wilmington #2 *, Wilmington #3 *, Wilmington #4 *, Wilmington #5 *, Wilmington #6 *, Wilmington #7 *, Wilmington #8 *, Wilmington #9 *, Wilmington #10 *, Wilmington #11 *, Wilmington #12 *, Wilmington #13 *,

Wilmington #14 *, Wilmington #15 *, Wilmington #16 *,
Wilmington #17 *, Wilmington #18 *.

District 14: Brunswick County; Columbus County; New Hanover
County: Cape Fear #1 *, Cape Fear #2 *.

District 15: Wake County: Marks Creek #1 *, Middle Creek #1 *,
Panther Branch *, St. Marys #1 *, St. Marys #2 *, St. Marys #4 *,
St. Matthews #2 *, St. Matthews #4 *, Swift Creek #2 *, Swift Creek
#3 *.

District 16: Cumberland County: Beaver Dam *, Cedar Creek *,
Alderman *; Hoke County: Fort Bragg, Puppy Creek, McCain,
Buchan, Raeford # 1, Raeford # 2, Rockfish; Moore County:
Township 10, Little River; Robeson County: Britts *, East
Howellsville *, West Howellsville *, Lumberton #3 *: Remainder not
in District 87; Lumberton #4 *, Orrum *, Parkton *, Sterlings *,
North St. Pauls *, South St. Pauls *, Wishart *; Scotland County:
Laurel Hill *, Laurinburg #3 *, Laurinburg #4 *, Laurinburg #5 *.

District 17: Cumberland County: Westarea *, Cross Creek #1 *,
Cross Creek #3 *, Cross Creek #5 *, Cross Creek #9 *, Cross Creek
#13 *, Cross Creek #16 *, Cross Creek #17 *, Cross Creek #19 *,
Cross Creek #24 *, Manchester *, Spring Lake *, Beaver Lake *,
Cottonade *, Morganton Road #1 *, Seventy First #1 *: Tract
0033.02: Block Group 1: Block 101, Block 102, Block 103, Block
104, Block 105, Block 106, Block 107, Block 108, Block 109, Block
110, Block 111, Block 112, Block 113, Block 114, Block 115, Block
116; Block Group 3: Block 301, Block 303, Block 304, Block 305,
Block 306, Block 307, Block 308, Block 309, Block 312, Block 313,
Block 314.

District 18: Cumberland County: Black River *, Linden *, Long
Hill *, Cross Creek #4 *, Cross Creek #6 *, Cross Creek #7 *, Cross
Creek #8 *, Cross Creek #11 *, Cross Creek #12 *, Cross Creek #14
*, Cross Creek #15 *, Cross Creek #18 *, Cross Creek #21, Cross
Creek #22 *, Cross Creek #23 *, Cross Creek #2 *, Eastover *,
Wade *, Pearces Mill #2 *, Pearces Mill #3 *, Brentwood *,
Montclair *, Morganton Road #2 *, Seventy First #1 *: Remainder
not in District 17.

District 19: Harnett County, Lee County.

District 20: Franklin County: Dunn, Harris, Youngsville, Cyprus Creek, Pilot, Pearces; Johnston County: East Clayton *, West Clayton *, Micro *, North O'Neals *, South O'Neals *, West Selma *, Wilders *, Wilson's Mills *; Nash County: Bailey *, Coopers *, Drywells *, Ferrells *, Jacksons *.

District 21: Wake County: Raleigh 01-14 *, Raleigh 01-19 *, Raleigh 01-20 *, Raleigh 01-22 *, Raleigh 01-26 *, Raleigh 01-28 *, Raleigh 01-34 *, Raleigh 01-38 *, Raleigh 01-40 *, Raleigh 01-46 *, St. Matthews #1 *, St. Matthews #3 *.

District 22: Franklin County: Franklinton, Hayesville, Sandy Creek, Gold Mine, Cedar Rock, Louisburg Country, Louisburg City: Granville County: Brassfield *, Butner *, Creedmoor *, Corinth *, Credle *, West Oxford Elementary *, Tally Ho *, Walnut Grove *; Halifax County: Littleton #2 *, Roanoke Rapids #1 *, Roanoke Rapids #2 *, Roanoke Rapids #3 *, Roanoke Rapids #4 *, Roanoke Rapids #5 *, Roanoke Rapids #6 *, Roanoke Rapids #8 *, Roanoke Rapids #10 *, Roanoke Rapids #11 *; Person County, Vance County: Hilltop, Kittrell, Watkins, West Henderson I, West Henderson IIB; Warren County: Fishing Creek, Judkins, River, Roanoke, Sixpound.

District 23: Durham County: Bragtown School *, Brogden Junior H.S. *, Burton School *, C.C. Spaulding School *, Club Blvd. School *, Durham Co. Main Library *, Durham High School *, Edison Johnson Community Center *, E.K. Powe School *, Fire Station #6 *, Forest Hills Club House *, Hillendale School *, Holloway Street School *, Holton Junior High School *, Holy Infant Catholic Church *, Hope Valley School *, Lakewood School *, Moose Lodge *, Morehead School *, Multi-Purpose Building/Duke *, NC School of Science & Math *, North Durham School Building *, Pearson School *, Pearisontown School *, R.N. Harris *, Rogers-Herr Junior H.S. *, Shephard Junior H.S. *, St. Stephens/Parish Hall *, Watts Street School *, Weaver Street Community Center *, White Rock Baptist Church *, Y.E. Smith School *, Campus Precinct *, Homestead Heights Baptist *, Cole Mill Church of Christ *, Carrington Junior H.S. *, Eno Valley School *, Northern H.S. *, DNOE VALLEY SCHOOL NONCONTIGUOUS *, Mangum School *, Rougemont United Methodist *, Bethesda Ruritan Club *, Durham Academy Gym *, Five Oaks Seventh Day Adventist Church *, Jordan H.S. *.

District 24: Chatham County: Albright *, Bynum *, East Mann's Chapel *, West Mann's Chapel *, Cape Fear *, East Pittsboro *,

West Pittsboro *, Goldston *, Hadley *, Haw River *, Hickory Mountain *, New Hope *, Oakland *, East Williams *, West Williams *, Orange County: Orange Grove *, White Cross *, Cedar Grove *, Tolars *, Battle Park *, Coker Hills *, Coles Store *, Colonial Heights *, Country Club *, Dogwood Acres *, East Franklin *, Eastside *, Estes Hills *, Foxcroft *, Glenwood *, Greenwood *, Kings Mill *, Lincoln *, Lions Club *, Mason Farm *, North Carrboro *, Norside *, Owasa *, Patterson *, Ridgefield *, St. John *, Town Hall *, Weaver Dairy *, Westwood *, Efland *, Eno *, St. Marys *, Cameron Park *, Grady Brown *, Hillsborough *, West Hillsborough *, Caldwell *.

District 25: Alamance County, Caswell County, Orange County: Carr *, Cheeks *; Rockingham County: New Bethel *, Reidsville #1 *, Reidsville #2 *, Reidsville #3 *, Reidsville #4 *, Reidsville #5 *, Reidsville #6 *, Oregon Hill *, Ruffin *, Ironworks *, Williamsburg *.

District 26: Guilford County: GB-03 *, GB-05 *, GB-06 *, GB-07 *, GB-08 *, GB-19 *, GB-29 *, GB-30 *, GB-44 *, Clay *, Fentress-1 *, Fentress-2 *, Greene *, North Sumner *.

District 27: Guilford County: GB-38 *, GB-39 *, GB-43 *, HP-04 *, HP-08 *, HP-16 *, HP-19 *, HP-20 *, HP-24 *, Deep River *, Friendship-1 *, Friendship-2 *, Jamestown-2 *, Jamestown-3 *, South Sumner *, GB-24C *.

District 28: Guilford County: HP-01 *, HP-02 *, HP-03 *, HP-05 *, HP-06 *, HP-07 *, HP-09 *, HP-10 *, HP-11 *, HP-12 *, HP-13 *, HP-14 *, HP-15 *, HP-17 *, HP-18 *, HP-21 *, HP-22 *, HP-23 *, Jamestown-1 *.

District 29: Guilford County: GB-21 *, GB-22 *, GB-23 *, GB-24A *, GB-27A *, GB-32 *, GB-34A *, GB-36 *, GB-37A *, GB-40A *, GB-41A *, North Center Grove *, South Center Grove *, North Monroe *, GB-24B *, GB-27B *, GB-34B *, GB-37B *, GB-27C *.

District 30: Chatham County: Bennett *, Bonlee *, Harpers Crossroads *, North Siler City *, South Siler City *; Randolph County: North Asheboro *, McCrary *, Eastside *, Lindley Park *, Coleridge *, West Ramseur *, Staley *, East Ramseur *, Falls *, Franklinville *, Liberty *, Providence *, East Randleman *, West Randleman *, Worthville *.

District 31: Moore County: Township 1, Carthage, Township 2, Bensalem, Township 3, Sheffields, Township 4, Ritters, Township 5, Deep River, Township 6, Greenwood, Township 7, McNeill, Township 8, Sand Hill, Township 9, Mineral Springs.

District 32: Montgomery County: Rocky Springs township; Richmond County, Scotland County: Williamson-Depot *, Williamson-Gibson *.

District 33: Anson County, Montgomery County: Biscoe township, Cheek Creek township, Eldorado township, Little River township, Mount Gilead township, Ophir township, Peedee township, Star township, Troy township, Uwharrie township; Stanly County: Center township, Tyson township.

District 34: Union County: Altan *, Prospect *, Roughedge *, Smyrna *, Waxhaw *, Wilson's Old Store *, Lanes Creek *, North Marshville *, South Marshville *, Bakers *, Carmel *, Sutton Park *, Wingate *, East Monroe *, North Monroe *, South Monroe *, Olive Branch *, Mineral Springs *, Siler *.

District 35: Rowan County: Bradshaw *, Blackwelder Park *, West Landis *, Cleveland *, Franklin *, Faith Noncontiguous, Mt. Ulla *, East Spencer *, Milford Hills *, Spencer *, Trading Ford, West Innes *, East Ward I *, East Ward II *, North Ward I *, North Ward II *, South Ward *, West Ward I *, West Ward II *, West Ward III *, Trading Ford Noncontiguous A, Scotch Irish *, Steele *, Unity *.

District 36: Mecklenburg County: Charlotte Pct. 5 *, Charlotte Pct. 6 *, Charlotte Pct. 17 *, Charlotte Pct. 29 *, Charlotte Pct. 33 *, Charlotte Pct. 34 *, Charlotte Pct. 46 *, Charlotte Pct. 62 *, Charlotte Pct. 63 *, Charlotte Pct. 84 *, MA2 *, MA3 *, Charlotte Pct. 102.

District 37: Davidson County: Boone *, Central *, Cotton *, Southmont *, Lexington No. 1 *, Lexington No. 2 *, Lexington No. 4 *, Ward No. 1 *, Ward No. 2 *, Ward No. 3 *, Ward No. 4 *, Ward No. 5 *, Ward No. 6 *, Tyro *, Silver Hill *, Thomasville No. 2 *, Thomasville No. 3 *, Thomasville No. 7 *.

District 38: Randolph County: Westside *, Loflin *, Armory *, South Pointe *, Back Creek *, Deep River *, East Cedar Grove *, West Cedar Grove *, East Archdale *, West Archdale *, East Trinity

*, Concord *, Grant *, Level Cross *, New Hope *, Richland *,
Tabernacle *, Union *, North New Market *, South New Market *.

District 39: Forsyth County: Clemmonsville #1 *, Lewisville #2 *,
South Fork #3 *, Ardmore Baptist Church *, Bible Wesleyan Church
*, Bolton Swimming Center *, Calvary Baptist Church *, First
Christian Church *, Forsyth Tech W. Camp. *, Greek Orthodox
Church *, Miller Park Recreation Center *, Mt. Tabor High School
*, Parkway United Church *, Polo Park Recreation Center *,
Reynolds High School Gym *, South Fork Elem School *, St. Anne's
Episcopal Church *, Summit School *, Trinity United Methodist
Church *, Whitaker Elementary School *.

District 40: Alleghany County; Ashe County; Stokes County; Surry
County, Watauga County.

District 41: Alexander County: Gwaltneys township, Little River
township, Millers township, Sharpes township, Sugar Loaf township,
Taylorsville township, Wittenberg township; Wilkes County, Yadkin
County.

District 42: Iredell County: Bethany *, Chambersburg *, Concord
*, Cool Springs *, Eagle Mills *, New Hope *, Olin *, Sharpesburg
*, Statesville #1 *, Statesville #2 *, Statesville #3 *, Statesville #4 *,
Statesville #5 *, Statesville #6 *, Turnersburg *, Union Grove *.

District 43: Catawba County: Balls Creek *, East Maiden *,
Catawba *, Monogram *, Claremont *, Sherrills Ford *; Iredell
County: Barringer *, Coddle Creek #1 *, Coddle Creek #2 *, Coddle
Creek #3 *, Coddle Creek #4 *, Davidson *, Fallstown *, Shiloh *.

District 44: Gaston County: Landers Chapel *, Tryon *, Bessemer
City #1 *, Dallas #1 *, Firestone *, Health Center *, Highland *,
Myrtle *, Woodhill *, Victory *; Lincoln County: North Brook I/II,
Crouse, Heavners, Lincolnton/North, Lincolnton/South, Long Shoals,
Lithia, Love Memorial.

District 45: Catawba County: Banoak *, Oxford *, Springs *,
Brookford *, Mountain View #1 *, St. Stephens #1 *, Sweetwater *,
Blackburn *, Conover West *, Conover East *, East Newton *,
Maiden *, Mt. Olive *, North Newton *, South Newton *, Startown
*, West Newton *; Gaston County: Alexis *, Dallas #2 *, High
Shoals *, Lucia *, Mt. Holly #2 *, Stanley #2 *; Lincoln County:
Westport, Daniels/Vale, Iron Station, Hickory Grove, Asbury, Salem,

Boger City, Buffalo Shoals, Denver, Lowesville, North Brook III, Pumpkin Center, Triangle.

District 46: Avery County: Burke County: Drexel #3 *, Icard #1 *, Icard #2 *, Icard #3 *, Icard #4 *, Icard #5 *, Jonas Ridge *, Lower Fork *, Smoky Creek *, Upper Fork *; Caldwell County: Globe *, Johns River *, Gamewell #1 *, Gamewell #2 *, Lenoir #2 *, Lenoir #3 *, Lovelady-Rhodhiss *, Lower Creek #2 *, North Catawba *, Wilson Creek *; Catawba County: Hickory #1 *, Hickory #2 *, Hickory #3 *, Hickory #4 *, Hickory #5 *, Highland *, Longview #1 *, Longview #2 *, Longview #3 *, Oakland Heights *, Sandy Ridge *, Viewmont #1 *, Viewmont #2 *, Mountain View #2 *; Mitchell County.

District 47: Burke County: Drexel #1 *, Drexel #2 *, Linville #2 *, Lovelady #1 *, Lovelady #2 *, Lovelady #3 *, Lovelady #4 *, Lower Creek *, Morganton #1 *, Morganton #3 *, Morganton #4 *, Morganton #5 *, Morganton #6 *, Morganton #7 *, Morganton #8 *, Morganton #9 *, Morganton #10 *, Quaker Meadow #1 *, Quaker Meadow #2 *, Silver Creek #1 *, Silver Creek #2 *, Silver Creek #3 *, Silver Creek #4 *.

District 48: Cleveland County: Gaston County: Cherryville #1 *, Cherryville #2 *, Cherryville #3 *, Bessemer City #2 *; Polk County: Columbus township, Greens Creek township, Tryon township, White Oak township; Rutherford County: Rutherford County.

District 49: Burke County: Linville #1 *, Upper Creek *; McDowell County; Yancey County.

District 50: Henderson County: North Blue Ridge *, South Blue Ridge *, Clear Creek *, Bowmans Bluff *, Crab Creek *, Bat Cave *, Edneyville *, Green River *, Raven Rock *, Armory *, Flat Rock *, Grimesdale *, Horse Shoe *, Laurel Park *, Long John Mountain *, Moores Grove *, Northeast *, Pisgah View *, Southeast *, Southwest *, Valley Hill *, Fletcher *, Hoopers Creek *, Park Ridge *, Etowah *, South Mills River *; Polk County: Cooper Gap township, Saluda township.

District 51: Buncombe County: Asheville #1 *, Asheville #2 *, Asheville #3 *, Asheville #4 *, Asheville #5 *, Asheville #6 *, Asheville #7 *, Asheville #8 *, Asheville #9 *, Asheville #10 *, Asheville #11 *, Asheville #12 *, Asheville #13 *, Asheville #14 *, Asheville #15 *, Asheville #16 *, Asheville #17 *, Asheville #20 *.

Asheville #21 *, Beaverdam *, Haw Creek *, Hazel #1 *, Hazel #2 *, Reynolds *, Woodfin *, Averys Creek *, Black Mountain #1 *, Black Mountain #2 *, Black Mountain #3 *, Black Mountain #4 *, Broad River *, Fairview *, Flat Creek *, French Broad *, Lower Hominy #1 *, Lower Hominy #2 *, Lower Hominy #3 *, Upper Hominy #1 *, Upper Hominy #2 *, Ivy #1 *, Ivy #2 *, Leicester *, West Buncombe *, Riceville *, Swannanoa #1 *, Swannanoa #2 *, Reems Creek *, Weaverville #1 *, Weaverville #2 *, Sandy Mush *.

District 52: Graham County; Haywood County; Jackson County: Barkers Creek township, Canada township, Caney Fork township, Cullowhee township, Dillsboro township, Greens Creek township, Mountain township, Qualla township, River township, Savannah township, Scott Creek township, Sylva township, Webster township; Madison County; Swain County.

District 53: Cherokee County; Clay County; Jackson County: Cashiers township, Hamburg township; Macon County.

District 54: Mecklenburg County: Charlotte Pct. 26 *, Charlotte Pct. 28 *, Charlotte Pct. 60, Charlotte Pct. 82 *, COR *, CO2 *, DAV *, HUN *, MC1, MC1 part, XMC2 Noncontiguous: Tract 0055.01: Block Group 3: Block 303C; Charlotte Pct. 105.

District 55: Mecklenburg County: Charlotte Pct. 19 *, Charlotte Pct. 48 *, Charlotte Pct. 50 *, Charlotte Pct. 57 *, Charlotte Pct. 58 *, Charlotte Pct. 59 *, Charlotte Pct. 72 *, Charlotte Pct. 73 *, Charlotte Pct. 74 *, Charlotte Pct. 75 *, Charlotte Pct. 76 *, Charlotte Pct. 87 *, Charlotte Pct. 92 *, Charlotte Pct. 97 *, PVL *.

District 56: Mecklenburg County: Charlotte Pct. 7 *, Charlotte Pct. 8 *, Charlotte Pct. 9 *, Charlotte Pct. 10 *, Charlotte Pct. 13 *, Charlotte Pct. 20 *, Charlotte Pct. 21 *, Charlotte Pct. 22 *, Charlotte Pct. 32 *, Charlotte Pct. 35 *, Charlotte Pct. 37 *, Charlotte Pct. 38 *, Charlotte Pct. 47 *, Charlotte Pct. 49 *, Charlotte Pct. 51 *, Charlotte Pct. 52 *, Charlotte Pct. 77 *, Charlotte Pct. 98 *.

District 57: Mecklenburg County: Charlotte Pct. 36 *, Charlotte Pct. 64 *, Charlotte Pct. 65 *, Charlotte Pct. 66 *, Charlotte Pct. 67 *, Charlotte Pct. 68 *, Charlotte Pct. 69 *, Charlotte Pct. 70 *, Charlotte Pct. 71 *, Charlotte Pct. 85 *, Charlotte Pct. 86 *, Charlotte Pct. 91, Charlotte Pct. 93 *, Charlotte Pct. 96 *, Charlotte Pct. 93 Part, Charlotte Pct. 100 *.

District 58: Mecklenburg County: Charlotte Pct. 1 *, Charlotte Pct. 2 *, Charlotte Pct. 3, Charlotte Pct. 4, Charlotte Pct. 14 *, Charlotte Pct. 15 *, Charlotte Pct. 18 *, Charlotte Pct. 30 *, Charlotte Pct. 43 *, Charlotte Pct. 44 *, Charlotte Pct. 45 *, Charlotte Pct. 61 *, Charlotte Pct. 95 *, Charlotte Pct. 104.

District 59: Mecklenburg County: Charlotte Pct. 16 *, Charlotte Pct. 23 *, Charlotte Pct. 25 *, Charlotte Pct. 31 *, Charlotte Pct. 39 *, Charlotte Pct. 40 *, Charlotte Pct. 41 *, Charlotte Pct. 53 *, Charlotte Pct. 78 *, Charlotte Pct. 79 *, Charlotte Pct. 81 *, Charlotte Pct. 89 *, LC2, Charlotte Pct. 16 Part.

District 60: Mecklenburg County: Charlotte Pct. 11 *, Charlotte Pct. 12 *, Charlotte Pct. 24 *, Charlotte Pct. 27 *, Charlotte Pct. 42 *, Charlotte Pct. 54 *, Charlotte Pct. 55 *, Charlotte Pct. 56 *, LEM *, LC1 - North, LC1 - South, MC2, OAK, PC1 *.

District 61: Wake County: Raleigh 01-02 *, Raleigh 01-04 *, Raleigh 01-10 *, Raleigh 01-11 *, Raleigh 01-16 *, Raleigh 01-17 *, Raleigh 01-29 *, Raleigh 01-30 *, Raleigh 01-33 *, Raleigh 01-36 *, Raleigh 01-37 *, Raleigh 01-39 *, Raleigh 01-43 *, Raleigh 01-45 *, House Creek #1 *, House Creek #2 *, House Creek #3 *, House Creek #5 *.

District 62: Wake County: Buckhorn *, Cary #1 *, Cary #3 *, Cary #4 *, Cary #6 *, Cary #7 *, Cary #9 *, Cary #10 *, Holly Springs *, Middle Creek #2 *, White Oak #1 *, White Oak #2 *.

District 63: Durham County: Nelson Community Center *, Parkwood School *; Wake County: Raleigh 01-01 *, Raleigh 01-23 *, Raleigh 01-31 *, Raleigh 01-32 *, Raleigh 01-41 *, Cary #2 *, Cary #5 *, Cary #8 *, Cedar Fork *, Meredith *.

District 64: Wake County: Raleigh 01-03 *, Raleigh 01-05 *, Raleigh 01-06 *, Raleigh 01-07 *, Raleigh 01-09 *, Raleigh 01-12 *, Raleigh 01-13 *, Raleigh 01-15 *, Raleigh 01-18 *, Raleigh 01-21 *, Raleigh 01-27 *, Raleigh 01-35 *, Raleigh 01-27 Part, St. Marys #3 *, St. Marys #5 *, St. Marys #6 *, St. Marys # 7, Swift Creek #1 *, Swift Creek #4 *.

District 65: Wake County: Raleigh 01-42 *, Raleigh 01-44 *, Little River #1 *, Little River #2 *, Marks Creek #2 *, Neuse #1 *, Neuse #2 *, Wake Forest #1 *, Wake Forest #2 *.

District 66: Forsyth County: Broadbay #1 *, Middlefork #2 *, Middlefork #3 *, Ashley Middle School *, Covenant Presbyterian Church *, East Winston Library *, Easton Elementary School *, Forest Pk. Elementary School *, 14th Street Recreation Center *, Happy Hill Recreation Center *, Hill Middle School *, Kennedy Middle School *, Mineral Springs F. St *, Philo Middle School *, St. Andrews United Methodist *, Trinity Moravian Church *, Winston Lake Family YMCA *.

District 67: Forsyth County: Bethabara Moravian Church *, Bishop McGuinness *, Brown/Douglas Recreation *, Brunson Elementary School *, Carver High School *, Christ Moravian Church *, Forest Hill Fire Station *, Hanes Community Center *, Latham Elementary School *, Lowrance Middle School *, M. L. King Recreation Center *, Memorial Coliseum *, Mt. Sinai Church *, New Hope United Methodist Church *, Old Town Presbyterian Church *, Parkland High School *.

District 68: Buncombe County: Asheville #18 *, Asheville #19 *, Biltmore *, Limestone #1 *, Limestone #2 *, Henderson County: Hendersonville #1 *, Hendersonville #2 *, Hendersonville #3 *, Northwest *, Rugby *, Northwest Non-contiguous *, Brickton, Brickton Noncontiguous, North Mills River *; Transylvania County.

District 69: Mecklenburg County: Charlotte Pct. 83 *, Charlotte Pct. 88 *, Charlotte Pct. 90 *, Charlotte Pct. 94 *, CCK *, CO1 *, MA1 *, MA4 *, MH1 *, MH2 *, MH3 *, PR1, PR2, PR3.

District 70: Edgecombe County: Precinct 12-1 *, Precinct 12-2 *, Precinct 12-3 *, Precinct 12-4 *, Precinct 12-5 *, Precinct 14-1 *; Nash County: Rocky Mount #3 *, Rocky Mount #4 *; Wilson County: Toisnot *, Wilson A *, Wilson B *, Wilson E *, Wilson F *, Wilson G *, Wilson H *, Wilson N *, Wilson Q *.

District 71: Edgecombe County: Precinct 1-2 *, Precinct 1-3 *, Precinct 1-4 *, Precinct 2-1 *, Precinct 7-1 *, Precinct 8-1 *, Precinct 9-1 *, Precinct 10-1 *, Precinct 11-1 *, Precinct 13-1 *; Nash County: Mannings #2 *, Nashville *, Red Oak *, Battleboro *; Wilson County: Black Creek *, Cross Roads *, Gardners *, Old Fields *, Saratoga *, Spring Hill *, Stantonsburg *.

District 72: Nash County: Oak Level, Oak Level Noncontiguous, Rocky Mount #1 *, Rocky Mount #2 *, Rocky Mount #5 *, Rocky Mount #6 *, Rocky Mount #7 *, Stony Creek #1, Stony Creek

Noncontiguous A, Stony Creek Noncontiguous B; Wilson County: Taylors *, Wilson C *, Wilson D *, Wilson I *, Wilson J *, Wilson K *, Wilson L *, Wilson M *, Wilson P *.

District 73: Forsyth County: Belews Creek *, Rockingham County: Huntsville *, Central Area *, Draper #1 *, Draper #2 *, Leaksville #1 *, Leaksville #2 *, Leaksville #3 *, Spray #1 *, Madison #1 *, Madison #2 *, Martins *, Mayodan *, Dan Valley *, Shiloh *, Stoneville *, Hogans *, Price *, Mayfield *, Bethlehem *, Wentworth *.

District 74: Davidson County: Arcadia *, Hampton *, Lexington No. 3 *, Welcome *, Midway *, Reeds *, Reedy Creek *, Yadkin College *; Davie County.

District 75: Cumberland County: Judson *, Stedman *, Cross Creek #10 *, Cross Creek #20 *, Vander *, Sherwood *, Pearces Mill #4 *, Cumberland #1 *, Cumberland #2 *, Hope Mills #1 *, Hope Mills #2 *, Seventy First #2 *, Seventy First #3 *.

District 76: Gaston County: Crowders Mtn. *, Ashbrook *, Forest Heights *, Gardner Park *, Gaston Day *, Robinson *, Sherwood *, South Gastonia *, New Hope *, Union *; Mecklenburg County: SC1, SC2.

District 77: Greene County: Hookerton, Snow Hill Town Satellite, Ormonds, Sugg; Jones County: Chinquapin *, Cypress Creek *, Tuckahoe *; Lenoir County: Falling Creek *, Institute *, Kinston #3 *, Kinston #4 *, Kinston #5 *, Kinston #9 *, Moseley Hall *, Neuse *, Pink Hill #1 *, Pink Hill #2 *, Sandhill *, Southwest *, Trent #1 *, Trent #2 *, Vance *, Woodlinton *; Onslow County: Cross Roads *, Catherine Lake *, Haw Branch *.

District 78: Granville County: Antioch *, Oak Hill *, East Oxford *, South Oxford *, Salem *, Sassafras Fork *; Vance County: Dabney, Middleburg, Sandy Creek, Townsville, Williamsboro, East Henderson I, East Henderson II, North Henderson I, North Henderson II, South Henderson I, South Henderson II, West Henderson IIA; Warren County: Fork, Hawtree, Nutbush, Sandy Creek, Shocco, Smith Creek, East Warrenton, Norlina, West Norlina.

District 79: Craven County: Cove City *, Dover *, Fort Barnwell *, Harlowe *, Croatan *; Remainder not in District 3; Havelock *: Tract 9611; Block Group 2: Block 249, Block 250, Block 283, Block 284,

Block 285, Block 286, Block 287, Block 288, Block 291, Block 292, Block 293, Block 294, Block 295, Block 296, Block 297; Tract 9613; Block Group 2: Block 219A, Block 219B, Block 222, Block 223; Block Group 3: Block 323B, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329; Block Group 5: Block 503G, Block 525B; First Ward *, Second Ward *, Third Ward *, Fifth Ward *, Sixth Ward *, Clarks *, Country Club *, Rhems *: Remainder not in District 3; Jasper *: Jones County: Beaver Creek *, Pollocksville *, Trenton *, White Oak *: Lenoir County: Contentnea *, Kinston #1 *, Kinston #2 *, Kinston #6 *, Kinston #7 *, Kinston #8 *: Pamlico County: Township 5: Remainder not in District 3.

District 80: Onslow County: East Northwoods *, West Northwoods *, Half Moon *, Jacksonville, Tar Landing *, Bear Creek *, Hubert *, Camp Lejeune Military Base 5, Camp Lejeune Military Base 6, Camp Lejeune Military Base 7, Camp Lejeune Military Base 8, Camp Lejeune Military Base 9, Camp Lejeune Military Base 11.

District 81: Cabarrus County: Township 1, Box 1 *, Township 1, Box 2 *, Township 1, Box 3 *, Township 2, Box 3 *, Township 2, Box 4 *, Township 3 *, Township 4, Box 1 Noncontiguous A, Township 4, Box 1 Noncontiguous B, Township 4, Box 1 Noncontiguous C, Township 5 *, Township 6 *, Township 7 *, Township 9 *, Township 10 *, Township 11 *, Township 12, Box 3 *: Union County: Fairview *, West Sandy Ridge *, Hemby Bridge *, Indian Trail *, Stallings *.

District 82: Cabarrus County: Township 8 *: Stanly County: Almond township, Big Lick township, Endy township, Furr township, Harris township, North Albemarle township, Ridenhour township, South Albemarle township; Union County: Unionville *, Crestview *, Euto *.

District 83: Rowan County: Enochville *, Bostian School *, N. China Grove *, S. China Grove *, East Kannapolis *, West Kannapolis *, East Landis *, Barnhardt Mill *, Rockwell *, Bostian Crossroads *, Faith, Locke *, Sumner *, Morgan I *, Morgan II *, Gold Knob *, Granite Quarry *, Hatters Shop *.

District 84: Forsyth County: Bethania #1 *, Bethania #2 *, Bethania #3 *, Kernersville #1 *, Kernersville #2 *, Kernersville #3 *, Kernersville #4 *, Old Town #2 *, Old Town #3 *, Salem Chapel #1 *, Salem Chapel #2 *: Guilford County: Bruce *, Oak Ridge *, Stokesdale *.

District 85: Hoke County: Antioch, Stonewall; Robeson County: Back Swamp *, Burnt Swamp *, Lumber Bridge *, Lumberton #1 *, Lumberton #2 *: Remainder not in District 87; Lumberton #7 *, Lumberton #8 *, North Pembroke *, South Pembroke *, Philadelphus *, Raft Swamp *, Rennert *, Saddletree *, Shannon *, Smiths *, Thompson *, Union *.

District 86: Chowan County, Dare County; Perquimans County: VTD 0005, Bethel, West Hertford, Parkville, Belvidere, East Hertford, Nicanor; Tyrrell County, Washington County: Lees Mill *, Scuppernong *, Skinnersville *.

District 87: Hoke County: Allendale, Blue Springs, Raeford # 4, Raeford # 3, Raeford # 5; Robeson County: Alfordsville *, Fairmont #1 *, Fairmont #2 *, Gaddys *, Lumberton #2 *: Tract 9610: Block Group 3: Block 301, Block 302, Block 303; Tract 9612: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 121, Block 122, Block 129, Block 131, Block 132, Block 133; Tract 9613: Block Group 4: Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425; Lumberton #3 *: Tract 9612: Block Group 2: Block 203, Block 204, Block 214; Lumberton #5 *, Lumberton #6 *, Maxton *, Red Springs #1 *, Red Springs #2 *, Rowland *, Smyrna *, Whitehouse *; Scotland County: Spring Hill *, Laurinburg #1 *, Laurinburg #2 *, Laurinburg #6 *.

District 88: Forsyth County: Abbotts Creek #1 *, Abbotts Creek #2 *, Abbotts Creek #3 *, Broadbay #2 *, Clemmonsville #2 *, Clemmonsville #3 *, Lewisville #1 *, Lewisville #3 *, Old Richmond *, South Fork #2 *, Vienna #1 *, Vienna #2 *, Vienna #3 *, Country Club Fire St. *, Jefferson Elementary School *, Messiah Moravian Church *, Sherwood Forest Elementary School *.

District 89: Guilford County: GB-01 *, GB-02 *, GB-04 *, GB-09 *, GB-10 *, GB-11 *, GB-12 *, GB-13 *, GB-14 *, GB-15 *, GB-16 *, GB-17 *, GB-18 *, GB-20 *, GB-25 *, GB-26A *, GB-28 *, GB-31 *, GB-33 *, GB-35A *, GB-42 *, GB-45 *, Gibsonville *, Whitsett *, North Jefferson *, South Jefferson *, North Madison *, South Madison *, South Monroe *, North Washington *, South Washington *, GB-26B *, GB-35B *, GB-40B *, GB-41B *, GIB-G *, GB-35C *.

District 90: Cabarrus County: Township 2, Box 1 *, Township 2, Box 2 *, Township 4, Box 1, Township 4, Box 2 *, Township 4, Box 3 *, Township 4, Box 4 *, Township 4, Box 5 *, Township 4, Box 6 *, Township 4, Box 7 *, Township 4, Box 8 *, Township 4, Box 9 *, Township 12, Box 1 *, Township 12, Box 2 *, Township 12, Box 4 *, Township 12, Box 5 *, Township 12, Box 6 *, Township 12, Box 7 *, Township 12, Box 8 *, Township 12, Box 9 *.

District 91: Alexander County: Ellendale township; Caldwell County: Hudson #1 *, Hudson #2 *, Kings Creek *, Lenoir #1 *, Lenoir #4 *, Little River *, Lovelady #2 *, Sawmills *, Lower Creek #1 *, Lower Creek #3 *, Lower Creek #4 *, Mulberry *, Patterson *, Yadkin Valley *; Catawba County: St. Stephens #2 *, Viewmont #3 *.

District 92: Durham County: Neal Junior H.S. *, Gorman Ruritan Club *, Oak Grove School *; Wake County: Bartons Creek #1 *, Bartons Creek #2 *, House Creek #4 *, House Creek #6 *, Leesville #1 *, Leesville #2 *, Leesville #3 *, New Light #1 *, New Light #2 *.

District 93: Gaston County: Armstrong *, Flint Groves *, Grier *, Memorial Hall *, Ranlo *, Mt. Holly #1 *, Stanley #1 *, Belmont #1 *, Belmont #2 *, Belmont #3 *, Catawba Heights *, Cramerton *, Lowell *, McAdenville *, Southpoint *; Mecklenburg County: Charlotte Pct. 80 *, BER *, PC2 *.

District 94: Davidson County: Abbotts Creek *, Alleghany *, Holly Grove *, Liberty *, Denton *, Emmons *, Silver Valley *, Healing Springs *, Jackson Hill *, Thomasville No. 1 *, Thomasville No. 4 *, Thomasville No. 5 *, Thomasville No. 8 *, Thomasville No. 9 *, Thomasville No. 10 *; Randolph County: West Trinity *, Prospect *.

District 95: Johnston County: North Banner *, South Banner *, West Banner *, North Beulah *, South Beulah *, North Boon Hill *, South Boon Hill *, Cleveland *, North Elevation *, South Elevation *, East Ingrams *, West Ingrams *, North Meadow *, South Meadow *, Pine Level *, Pleasant Grove *, East Selma *, East Smithfield *, North Smithfield *, West Smithfield *.

~~(b) The names and boundaries of townships specified in this section are as they were legally defined and in effect as of January 1, 1980, and recognized in the 1980 U.S. Census.~~

~~(c) For Guilford and Cumberland Counties, precinct boundaries are as shown on the maps on file with the State Board of Elections on January 1, 1982, in accordance with G.S. 163-128(b).~~

~~For Mecklenburg, Wake, Durham, and Forsyth Counties, precinct boundaries and streets are as shown on the current maps in use by the appropriate county board of elections of January 31, 1984, in accordance with G.S. 163-128(b).~~

~~If any changes in precinct boundaries are made, the areas on the map shall still remain in the same House District.~~

(b) The names and boundaries of townships, precincts (voting tabulation districts), tracts, block groups, and blocks, specified in this section are as they were legally defined and recognized in the 1990 U.S. Census, except as provided in subsection (c) of this section. Boundaries are as shown on the IVTD Version of the United States Bureau of the Census 1990 TIGER Files, with such modifications as made by the Legislative Services Office and shown on its computer database as of May 1, 1991, to reflect census blocks divided by prior district boundaries, and precincts added or modified as outlined in subsection (c) of this section.

(c) For Guilford County, precinct boundaries for High Point Precincts 20, 23, and 24 are as modified by the Guilford County Board of Elections and shown on the Legislative Services Office computer database as of May 1, 1991.

For Mecklenburg County, precinct boundaries are as altered by the Mecklenburg County Board of Elections as reported to the Legislative Services Office and shown on the Legislative Services Office computer database as of May 1, 1991.

For Wake County:

- (1) St. Marys Precinct #7 is as created by the Wake County Board of Elections out of St. Marys Precinct #4;
- (2) Raleigh 01-27 Part is an area reported by the Bureau of the Census as part of Raleigh 01-23 but has been put by the Wake County Board of Elections in Raleigh 01-27; and
- (3) VTD ZZZZ has been assigned to the appropriate parts of Wake Forest #1 and Wake Forest #2,

all as shown on the Legislative Services Office computer database as of May 1, 1991.

For Anson, Bertie, Camden, Caswell, Franklin, Gates, Greene, Hertford, Hoke, Lee, Lincoln, Martin, Mitchell, Northampton, Pasquotank, Perquimans, Person, Tyrrell, Vance, Warren, and Yadkin Counties, precincts are as shown on maps on file with the Legislative Services Office as of May 1, 1991, except that:

- (1) In Anson County, Lanesboro #1 and Lanesboro #2 are listed together as Lanesboro #1 and #2;

- (2) In Vance County, where West Henderson II is not contiguous, the northerly part is listed as West Henderson IIA and the southerly part as West Henderson IIB;
- (3) In Perquimans County, computer VTD Code 0005 (Tract 9801, Block 550A) is actually part of Belvidere Precinct and is districted with it notwithstanding any description above;
- (4) In Greene County, Snow Hill Town Satellite is Tract 9503, Block 301A which is a part of Snow Hill Town Precinct entirely surrounded by Sugg Precinct and is districted with Sugg Precinct notwithstanding any description above;
- (5) In Greene County, Snow Hill Town Sat B is Tract 9503, Block 224B which is a part of Snow Hill Town Precinct entirely surrounded by Snow Hill Rural Precinct and is districted with Snow Hill Rural Precinct notwithstanding any description above;
- (6) In Mecklenburg County, Precinct XMC2 Noncontiguous is Tract 55.01, Block 303C, and is districted with Precinct MC1 notwithstanding any description above;
- (7) In Martin County, any listing of VTDs not defined consists of Tract 9705, Block 413 (which is in Poplar Point Precinct), Tract 9704, Block 202 (which is in Goose Nest Precinct), and Tract 9706, Block 168A (which is in Robersonville #2 Precinct), and those blocks are districted with those respective precincts regardless of any listing above;
- (8) In New Hanover County, Tract 123.98, Blocks 307B, 308A, 309, 310A, 311A, and 312A, listed by the Census Bureau as part of VTD ZZZZ, are districted by this section as part of Wilmington #2.

If any precinct or township boundaries are changed, such changes shall not change the boundaries of the House Districts, which shall remain the same.

In the case where any individual blocks are listed above, the district allocation of unlisted water blocks shall be as found on maps and statistical reports of the districts on file with the Secretary of State.

In any districting plan adopted by the General Assembly:

- (1) Wake County Tract 0510, Block 301 is shown on the computer database as part of Raleigh 01-23 * when it is in fact correctly shown on the Board of Elections map as part of Raleigh 01-27;
- (2) Vance County Tract 9606 Blocks 248 and 227A are shown on the computer database as part of Hilltop, when they are in fact correctly shown on the Board of Elections map as

part of North Henderson II and East Henderson I, respectively.:

- (3) Lincoln County Tract 0706.98 Block 307 is shown on the computer database as part of North Brook I/II when it is in fact correctly shown on the Board of Elections map as part of North Brook III;
- (4) Mecklenburg County Tract 0044 Block 906F is shown on the computer database as part of OAK when it is fact correctly shown on the Board of Elections map as part of Charlotte Pct. 16;
- (5) Granville County Tract 9703, Block 330B is districted with Corinth * Precinct notwithstanding any description above.
- (d) If this section does not specifically assign any area within North Carolina to a district, and the area is:
 - (1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district;
 - (2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 1990 United States Census; or
 - (3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

S.B. 17

CHAPTER 676

AN ACT TO ESTABLISH SENATORIAL DISTRICTS AND TO APPORTION SEATS IN THE SENATE AMONG DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-1 reads as rewritten:

" § 120-1. *Senators.*

(a) For the purpose of nominating and electing members of the Senate in ~~1984~~ 1992 and every two years thereafter, senatorial districts are established and seats in the Senate are apportioned among those districts so that each District elects one Senator, except that Districts 12, 13, 14, 16, 17, 20, 27, and 28 each elects two Senators, and the composition of each district is as follows:

~~District 1 elects one Senator and consists of Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell and Washington Counties; the Pantego Township of Beaufort County; the~~

~~following areas in Bertie County: Merry Hill, and Whites Townships, and in Windsor Township the Town of Askewville and Enumeration Districts 196 and 197; and in Gates County: Holly Grove, Hunters Hill and Mintonville Townships,~~

~~District 2 elects one Senator and consists of Hertford and Northampton Counties; the following areas in Bertie County: Colerain, Indian Woods, Mitchells, Roxobel, Snake Bite and Woodville Townships, and in Windsor Township: The Town of Windsor and Enumeration Districts 198A, and 199; in Edgecombe County: 3 (Upper Conetoe) and 4 (Deep Creek) Townships; in Gates County: Gatesville, Hall, Haslett and Reynoldson Townships; in Halifax County: Conocoannara, Enfield, Halifax, Littleton, Palmyra, Roseneath, Scotland Neck, and Weldon Townships; in Martin County: Goose Nest and Hamilton Townships; in Vance County: Middleburg-Nutbush, Townsville and Williamsboro Townships; and in Warren County: Fork, Hawtree, Nutbush, River, Roanoke, Sandy Creek, Shocco, Sixpound, Smith Creek and Warrenton Townships,~~

~~District 3 elects one Senator and consists of Carteret, Craven and Pamlico Counties,~~

~~District 4 elects one Senator and consists of Onslow County,~~

~~District 5 elects one Senator and consists of Duplin, Jones and Lenoir Counties and Columbia and Union Townships in Pender County,~~

~~District 6 elects one Senator and consists of in Edgecombe County: 1 (Tarboro), 2 (Lower Conetoe), 5 (Lower Fishing Creek), 8 (Sparta), 9 (Otter Creek), 10 (Lower Town Creek), 11 (Walnut Creek), 12 (Rocky Mount), 13 (Cokey), and 14 (Upper Town Creek) Townships; in Martin County: the Robersonville Township; in Pitt County: Arthur, Belvoir, Bethel, Falkland, Farmville and Fountain Townships; and in Wilson County: Gardner, Wilson and Toisnot Townships,~~

~~District 7 elects one Senator and consists of New Hanover County and the following townships of Pender County: Burgaw, Canetuck, Caswell, Grady, Holly, Long Creek, Rocky Point and Topsail,~~

~~District 8 elects one Senator and consists of Greene and Wayne Counties,~~

~~District 9 elects one Senator and consists of in Beaufort County: Bath, Chocowinity, Long Acre, Richland and Washington Townships; in Martin County: Beargrass, Cross Roads, Griffins, Jamesville, Poplar Point, Williams and Williamston Townships; and in Pitt County: Ayden, Carolina, Chicod, Greenville, Grifton, Grimesland, Pactolus, Swift Creek and Winterville Townships,~~

~~District 10 elects one Senator and consists of Nash County; in Edgecombe County: 6 (Upper Fishing Creek) and 7 (Swift Creek); in~~

~~Halifax County; Brinkleyville, Butterwood, Faucett and Roanoke Rapids Townships; in Warren County; Fishing Creek and Judkins Townships; and in Wilson County; Black Creek, Cross Roads, Old Fields, Saratoga, Springhill, Stantonburg, and Taylor Townships.~~

~~District 11 elects one Senator and consists of Franklin and Vance Counties; and in Wake County; Bartons Creek, Little River, Marks Creek, New Light and Wake Forest Townships and St. Matthews Precincts 1, 2, 3 and 4.~~

~~District 12 elects two Senators and consists of the following townships of Cumberland County; Black River, Carvers Creek, Cedar Creek, Cross Creek, Eastover, Gray's Creek, Manchester, Pearces Mill, Rockfish and Seventy-First.~~

~~District 13 elects two Senators and consists of Durham, Granville and Person Counties and the following townships of Orange County; Cedar Grove, Eno and Little River.~~

~~District 14 elects three Senators and consists of Harnett and Lee Counties and the following areas in Wake County; Buckhorn, Cary, Cedar Fork, Holly Springs, House Creek, Leesville, Meredith, Middle Creek, Neuse River, Panther Branch, Raleigh, St. Mary's, Swift Creek and White Oak Townships and those portions of St. Matthews Township not included in District 11.~~

~~District 15 elects one Senator and consists of Johnston and Sampson Counties.~~

~~District 16 elects two Senators and consists of Chatham, Moore and Randolph Counties and the following townships of Orange County; Bingham, Chapel Hill, Cheeks and Hillsborough.~~

~~District 17 elects two Senators and consists of Anson, Montgomery, Richmond, Scotland, Stanly and Union Counties.~~

~~District 18 elects one Senator and consists of Bladen, Brunswick and Columbus Counties and the Beaver Dam Township of Cumberland County.~~

~~District 19 elects one Senator and consists of the following townships of Forsyth County; Belews Creek and Kernersville; and consists of the following townships and precincts of Guilford County; Bruce Township, Center Grove Township, Clay Township, Fentress Township, Friendship Precinct I, Greene Township, Madison Township, Monroe Township, Greensboro Precincts 10, 20, 21, 27, 28, 32, 34, and 35, and Oak Ridge Township, Rock Creek Township, and Washington Township.~~

~~District 20 elects two Senators and consists of the following townships of Forsyth County; Abbotts Creek, Bethania, Broadbay, Clemmonsville, Lewisville, Middle Fork, Old Richmond, Old Town, Salem Chapel, South Fork, Vienna and Winston Townships.~~

~~District 21 elects one Senator and consists of Alamance and Caswell Counties.~~

~~District 22 elects one Senator and consists of Cabarrus County and the following precincts of Mecklenburg County: Charlotte Precincts 62 and 64, Clear Creek Precinct, Matthews Precinct, Mint Hill Precincts 1 and 2, Morning Star Precinct, and Providence Precinct.~~

~~District 23 elects two Senators and consists of Davidson, Davie and Rowan Counties.~~

~~District 24 elects two Senators and consists of Alleghany, Ashe, Rockingham, Stokes, Surry and Watauga Counties.~~

~~District 25 elects three Senators and consists of Cleveland, Gaston, Lincoln and Rutherford Counties.~~

~~District 26 elects two Senators and consists of Alexander, Catawba, Iredell and Yadkin Counties.~~

~~District 27 elects two Senators and consists of Avery, Burke, Caldwell, Mitchell and Wilkes Counties.~~

~~District 28 elects two Senators and consists of Buncombe, McDowell, Madison and Yancey Counties.~~

~~District 29 elects two Senators and consists of Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Polk, Swain and Transylvania Counties.~~

~~District 30 elects one Senator and consists of Hoke and Robeson Counties.~~

~~District 31 elects one Senator and consists of the following townships and precincts of Guilford County: Jefferson Township, Greensboro Precincts 3, 4, 5, 6, 7, 8, 9, 11, 19, 25, 29, and 30, High Point Precincts 3, 5, 6, 7, 11, 12, and 19, Jamestown Precincts 1, 2, and 3, Sumner Township, and Block 921 of Census Tract 166 in High Point Township.~~

~~District 32 elects one Senator and consists of the following townships and precincts in Guilford County: Deep River Township, Friendship Precinct II, Greensboro Precincts 1, 2, 12, 13, 14, 15, 16, 17, 18, 22, 23, 24, 26, 31, 33 and 36, and High Point Precincts 1, 2, 4, 8, 9, 10, 13, 14, 15, 16, 17, 18, 20, and 21, but it does not include Block 921 of Census Tract 166 in High Point Township.~~

~~District 33 elects one Senator and consists of the following precincts of Mecklenburg County: Charlotte Precincts 2, 11, 12, 13, 14, 15, 16, 22, 25, 27, 29, 31, 39, 41, 42, 44, 46, 52, 54, 55, 56, 60, 77, 78, and 82, and Long Creek Precinct 2.~~

~~District 34 elects one Senator and consists of the following precincts of Mecklenburg County: Charlotte Precincts 3, 4, 5, 23, 24, 26, 28, 30, 33, 40, 43, 45, 53, 61, 79, 80, 81, 83, 84, and 89, and Berryhill Precinct, Cornelius Precinct, Crab Orchard Precincts 1 and 2, Davidson Precinct, Huntersville Precinct, Lemly Precinct, Long~~

~~Creek Precinct 1, Mallard Creek Precincts 1 and 2, Oakdell Precinct, Paw Creek Precincts 1 and 2, and Steel Creek Precincts 1 and 2.~~

~~District 35 elects one Senator and consists of the following precincts of Mecklenburg County: Charlotte Precincts 1, 6, 7, 8, 9, 10, 17, 18, 19, 20, 21, 32, 34, 35, 36, 37, 38, 47, 48, 49, 50, 51, 57, 58, 59, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 85, 86, and 88, and Pineville Precinct.~~

District 1: Beaufort County: Bath township, Long Acre township, Pantego township, Richland township, Washington township: Tract 9902: Block Group 1: Block 175B, Block 185B; Tract 9905: Block Group 5: Block 522A, Block 528A; Camden County, Chowan County, Currituck County, Dare County, Hyde County: Hyde County; Pasquotank County, Perquimans County, Tyrrell County, Washington County: Plymouth #3 *, Scuppernong *, Skinnersville *.

District 2: Bertie County, Gates County, Halifax County: Hollister *, Butterwood *, Conoconnara *, Enfield #1 *, Enfield #2 *, Enfield #3 *, Halifax *, Littleton #1 *, Littleton #2 *, Hobgood *, Palmyra *, Roseneath *, Scotland Neck #1 *, Scotland Neck #2 *, Weldon #1 *, Weldon #2 *, Weldon #3 *; Hertford County, Northampton County, Vance County: Middleburg, Townsville, Williamsboro; Warren County.

District 3: Carteret County: Atlantic township, Beaufort township, Cedar Island township, Davis township, Harkers Island township, Harlowe township, Marshallberg township, Merrimon township, Morehead township: Tract 9703: Block Group 4: Block 437; Tract 9704: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142, Block 143, Block 144, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152, Block 153, Block 154, Block 155, Block 156, Block 157, Block 158A, Block 158B, Block 159, Block 160, Block 161; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307,

Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 507, Block 508, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 516, Block 517, Block 518, Block 519, Block 520, Block 521, Block 522A, Block 522B, Block 523, Block 524, Block 525, Block 526, Block 527A, Block 527B, Block 528, Block 529, Block 530, Block 531, Block 532, Block 533, Block 534, Block 535A, Block 535B, Block 536, Block 537, Block 538, Block 539, Block 540, Block 541, Block 542, Block 543, Block 544, Block 545, Block 546, Block 547, Block 548, Block 549, Block 550, Block 551, Block 552, Block 553, Block 554, Block 555, Block 556, Block 557, Block 558, Block 559; Block Group 6: Block 601, Block 602A, Block 602B, Block 602C, Block 602D, Block 602E, Block 603, Block 604A, Block 604B, Block 605A, Block 605B, Block 605C, Block 606, Block 607, Block 608, Block 609A, Block 609B, Block 610A, Block 610B, Block 611, Block 612, Block 613, Block 614, Block 615A, Block 615B, Block 615C, Block 616A, Block 616B, Block 617A, Block 617B, Block 618A, Block 618B, Block 618C, Block 619, Block 620, Block 621, Block 622, Block 623, Block 624, Block 625, Block 626, Block 627, Block 628, Block 629, Block 630, Block 631, Block 632, Block 633, Block 634A, Block 634B, Block 635; Tract 9705: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127A, Block 127B, Block 127C, Block 128, Block 129, Block 130, Block 131A, Block 131B, Block 131C, Block 132A, Block 132B, Block 132C, Block 133, Block 134, Block 135, Block 136A, Block 136B, Block 137A, Block 137B, Block 138, Block 139, Block 140A, Block 140B, Block 141, Block 142, Block 143, Block 144, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220A, Block 220B, Block 221,

Block 222A, Block 222B, Block 223A, Block 223B, Block 224, Block 225, Block 226, Block 227A, Block 227B, Block 227C, Block 228A, Block 228B, Block 228C, Block 229A, Block 229B, Block 229C, Block 230, Block 231, Block 232, Block 233, Block 234, Block 235, Block 236, Block 237, Block 238, Block 239; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 507, Block 508, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 516, Block 517, Block 518, Block 519, Block 520, Block 521, Block 522, Block 523, Block 524, Block 525, Block 526, Block 527, Block 528, Block 529, Block 530, Block 531, Block 532, Block 533, Block 534, Block 535, Block 536, Block 537, Block 538, Block 539, Block 540, Block 541, Block 542, Block 543, Block 544; Tract 9706: Block Group 1: Block 101A, Block 101B, Block 102, Block 103A, Block 103B, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231, Block 232, Block 233, Block 234, Block 235, Block 236, Block 237, Block 238, Block 239, Block 240, Block 241, Block 242, Block 243, Block 244, Block 245, Block 246, Block 247, Block 248, Block 249, Block 250, Block 251; Block Group 3: Block 301A, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338, Block 339, Block 340, Block 341, Block 342, Block 343, Block 344, Block 345, Block 346, Block 347, Block 348, Block 349, Block 350, Block 351, Block 352, Block 353,

Block 354, Block 355, Block 356, Block 357, Block 358, Block 359; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433; Tract 9707: Block Group 6: Block 601, Block 602, Block 621A, Block 621B, Block 624A, Block 625A, Block 626A, Block 627A, Block 628A, Block 629A, Block 630, Block 631, Block 632, Block 633, Block 634, Block 635, Block 636, Block 637, Block 638, Block 639, Block 640, Block 641, Block 642, Block 643, Block 644, Block 645, Block 646, Block 647, Block 648, Block 649A, Block 650, Block 651, Block 652, Block 653, Block 654, Block 655, Block 656, Block 657, Block 658, Block 659, Block 660, Block 661, Block 662, Block 663; Tract 9708: Block Group 4: Block 401A, Block 459A, Block 460, Block 461, Block 462, Block 463; Newport township, Portsmouth township, Sea Level township, Smyrna township, Stacy township, Straits township, White Oak township: Tract 9708: Block Group 1: Block 101B, Block 102, Block 103C, Block 105, Block 106, Block 130B, Block 139B; Block Group 4: Block 401C, Block 403, Block 404, Block 412, Block 413, Block 414, Block 415B, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433, Block 434, Block 435, Block 436, Block 437, Block 438, Block 439, Block 440, Block 441, Block 442, Block 443, Block 444, Block 456, Block 457, Block 458B; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 507, Block 508, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 516, Block 517, Block 518, Block 519, Block 520, Block 521, Block 522, Block 523, Block 524, Block 525, Block 526, Block 527, Block 528, Block 529, Block 530, Block 531, Block 532, Block 533, Block 534, Block 535, Block 536, Block 537, Block 538, Block 539, Block 540, Block 541, Block 542, Block 543, Block 544, Block 545; Craven County, Pamlico County.

District 4: Carteret County: Morehead township: Remainder not in District 3; White Oak township: Remainder not in District 3; Onslow County: Cross Roads *, East Northwoods *, Jacksonville, New River *, Tar Landing *, Brynn Marr *, Catherine Lake *, Harris Creek *, Folkstone *, Haws Run *, Holly Ridge *, Sneads Ferry *, Verona *, Bear Creek *, Hubert *, Swansboro *, Camp Lejeune Military Base 1, Camp Lejeune Military Base 2, Camp Lejeune Military Base 3, Camp Lejeune Military Base 4, Camp Lejeune Military Base 5, Camp Lejeune Military Base 6, Camp Lejeune Military Base 7, Camp

Lejeune Military Base 8, Camp Lejeune Military Base 9, Camp Lejeune Military Base 10, Camp Lejeune Military Base 11, Camp Lejeune Military Base 12, Camp Lejeune Military Base 13, Camp Lejeune Military Base 14; Pender County: Lower Topsail *, Upper Topsail *, Scott's Hill *, Surf City *.

District 5: Duplin County, Jones County, Lenoir County: Pink Hill #1 *, Pink Hill #2 *, Trent #1 *, Trent #2 *, Woodlinton *; Onslow County: West Northwoods *, Half Moon *, Haw Branch *, Gum Branch *, Richlands *, Mills *, Mortons *, Northeast *, VTD ZZZZ; Tract 0001: Block Group 1: Block 104A, Block 125A, Block 126, Block 127, Block 128, Block 129A, Block 130, Block 131, Block 132, Block 134A, Block 135A, Block 137A, Block 138, Block 139A, Block 140, Block 141, Block 142, Block 143, Block 144A, Block 144B, Block 144C, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152, Block 153, Block 154, Block 155, Block 156, Block 157, Block 158, Block 159, Block 160, Block 161, Block 162, Block 163, Block 164, Block 165, Block 166, Block 167, Block 168, Block 169A, Block 170, Block 171A, Block 172, Block 173, Block 174, Block 175, Block 176, Block 177A, Block 177B, Block 178, Block 179, Block 185, Block 186, Block 196A, Block 196B, Block 197A, Block 197B; Tract 0002: Block Group 6: Block 627A, Block 628, Block 629A, Block 629B, Block 630A, Block 631, Block 632, Block 633, Block 634A, Block 635A, Block 648A, Block 649A; Tract 0012: Block Group 1: Block 101A, Block 102A, Block 103, Block 104, Block 105, Block 106, Block 107A, Block 108A, Block 109A; Tract 0013: Block Group 1: Block 107; Sampson County.

District 6: Edgecombe County: Precinct 1-1 *, Precinct 1-2 *, Precinct 1-3 *, Precinct 1-4 *, Precinct 2-1 *, Precinct 3-1 *, Precinct 4-1 *, Precinct 5-1 *, Precinct 6-1 *, Precinct 7-1 *, Precinct 8-1 *, Precinct 10-1 *, Precinct 11-1 *, Precinct 12-1 *, Precinct 12-2 *, Precinct 12-4 *, Precinct 12-5 *; Martin County: Goose Nest, Hassell, Hamilton, Jamesville, Poplar Point, Robersonville # 1, Robersonville # 2, Williams, Williamston # 1, Williamston # 2, VTD's not defined; Pitt County: Arthur *, Belvoir *, Bethel *, Falkland *, Farmville West *, Farmville East *, Fountain *, Greenville #1 *, Greenville #2, Greenville #3 *, Greenville #4 *, Greenville #2 Noncontiguous; Washington County: Lees Mill *, Plymouth #1 *, Plymouth #2 *; Wilson County: Gardners *, Wilson B *, Wilson E *, Wilson F *, Wilson G *, Wilson H *, Wilson N *, Wilson Q *.

District 7: New Hanover County: Cape Fear #1 *, Cape Fear #2 *, Cape Fear #3 *, Federal Point #1 *, Federal Point #2 *, Federal Point #3 *, Wrightsville Beach *, Harnett #2 *, Harnett #3 *, Harnett #4 *, Harnett #5 *, Harnett #6 *, Harnett #7 *, Masonboro #2 *, Masonboro #3 *, Masonboro #4 *, Masonboro #5 *, Wilmington #1 *, Wilmington #2 *, Wilmington #3 *, Wilmington #4 *, Wilmington #6 *, Wilmington #7 *, Wilmington #8 *, Wilmington #9 *, Wilmington #10 *, Wilmington #11 *, Wilmington #12 *, Wilmington #13 *, Wilmington #14 *, Wilmington #15 *, Wilmington #16 *, Wilmington #17 *, Wilmington #18 *; Pender County: North Burgaw *, South Burgaw *, Canetuck *, Caswell *, Columbia *, Grady *, Middle Holly *, Upper Holly *, Long Creek *, Penderlea *, Lower Union *, Upper Union *, Rocky Point *.

District 8: Greene County, Lenoir County: Falling Creek *, Institute *, Moseley Hall *, Vance *, Wayne County.

District 9: Beaufort County: Chocowinity township, Washington township: Remainder not in District 1; Lenoir County: Contentnea *, Kinston #1 *, Kinston #2 *, Kinston #3 *, Kinston #4 *, Kinston #5 *, Kinston #6 *, Kinston #7 *, Kinston #8 *, Kinston #9 *, Neuse *, Sandhill *, Southwest *; Martin County: Bear Grass, Cross Roads, Griffins; Pitt County: Ayden West *, Ayden East *, Carolina *, Chicod *, Grifton *, Grimesland *, Simpson *, Pactolus *, Swift Creek *, Winterville West *, Winterville East *, Greenville #5 *, Greenville #6 *, Greenville #7 *, Greenville #8 *, Greenville #9 *, Greenville #10 *, Greenville #11 *, Greenville #12 *, Greenville #13 *.

District 10: Edgecombe County: Precinct 9-1 *, Precinct 12-3 *, Precinct 13-1 *, Precinct 14-1 *; Halifax County: Ringwood *, Faucett *, Roanoke Rapids #1 *, Roanoke Rapids #2 *, Roanoke Rapids #3 *, Roanoke Rapids #4 *, Roanoke Rapids #5 *, Roanoke Rapids #6 *, Roanoke Rapids #7 *, Roanoke Rapids #8 *, Roanoke Rapids #9 *, Roanoke Rapids #10 *, Roanoke Rapids #11 *; Nash County, Wilson County: Black Creek *, Saratoga *, Stantonsburg *, Toisnot *, Wilson A *, Wilson C *, Wilson D *, Wilson I *, Wilson M *.

District 11: Franklin County, Johnston County: North Beulah *, South Beulah *, East Clayton *, West Clayton *, Cleveland *, North O'Neals *, South O'Neals *, East Selma *, West Selma *, East Smithfield *, North Smithfield *, Wilders *, Wilson's Mills *; Vance County: Dabney, Hilltop, Kittrell, Sandy Creek, Watkins, East

Henderson I, East Henderson II, North Henderson I, North Henderson II, South Henderson I, South Henderson II, West Henderson I, West Henderson IIA, West Henderson IIB; Wilson County: Cross Roads *, Old Fields *, Spring Hill *, Taylors *, Wilson J *, Wilson K *, Wilson L *, Wilson P *.

District 12: Alleghany County, Ashe County, Guilford County: North Madison *, South Madison *, Stokesdale *, North Washington *, South Washington *; Rockingham County, Stokes County, Surry County, Watauga County.

District 13: Durham County, Granville County, Person County: Allensville, Cunningham-Chub Lake, Holloway, Mt. Tirzah, Roxboro City # 4, Woodsdale, Roxboro City # 1, Roxboro City # 1A, Roxboro City # 2, Roxboro City # 3; Wake County: Cedar Fork *, House Creek #1 *, Leesville #1 *, Leesville #3 *, New Light #2 *, White Oak #2 *.

District 14: Johnston County: North Elevation *, Pleasant Grove *; Wake County: Raleigh 01-01 *, Raleigh 01-02 *, Raleigh 01-03 *, Raleigh 01-04 *, Raleigh 01-05 *, Raleigh 01-06 *, Raleigh 01-07 *, Raleigh 01-09 *, Raleigh 01-10 *, Raleigh 01-11 *, Raleigh 01-12 *, Raleigh 01-13 *, Raleigh 01-14 *, Raleigh 01-15 *, Raleigh 01-16 *, Raleigh 01-17 *, Raleigh 01-18 *, Raleigh 01-19 *, Raleigh 01-20 *, Raleigh 01-21 *, Raleigh 01-22 *, Raleigh 01-23 *, Raleigh 01-26 *, Raleigh 01-27 *, Raleigh 01-28 *, Raleigh 01-29 *, Raleigh 01-30 *, Raleigh 01-31 *, Raleigh 01-32 *, Raleigh 01-33 *, Raleigh 01-34 *, Raleigh 01-35 *, Raleigh 01-36 *, Raleigh 01-37 *, Raleigh 01-38 *, Raleigh 01-39 *, Raleigh 01-40 *, Raleigh 01-41 *, Raleigh 01-42 *, Raleigh 01-43 *, Raleigh 01-44 *, Raleigh 01-45 *, Raleigh 01-46 *, Buckhorn *, Holly Springs *, Little River #1 *, Little River #2 *, Marks Creek #1 *, Marks Creek #2 *, Middle Creek #1 *, Middle Creek #2 *, Raleigh 01-27 Part, Panther Branch *, St. Marys #1 *, St. Marys #2 *, St. Marys #3 *, St. Marys #4 *, St. Marys #6 *, St. Marys # 7, St. Matthews #1 *, St. Matthews #2 *, St. Matthews #3 *, St. Matthews #4 *, Wake Forest #1 *, Wake Forest #2 *.

District 15: Harnett County, Johnston County: North Banner *, South Banner *, West Banner *, Bentonville *, North Boon Hill *, South Boon Hill *, South Elevation *, East Ingrams *, West Ingrams *, North Meadow *, South Meadow *, Micro *, Pine Level *, West Smithfield *; Lee County: Jonesboro, Cape Fear, Deep River, East Sanford, Cumnock, West Pocket, East Pocket, West Sanford # 1, West Sanford # 2, West Sanford # 3.

District 16: Chatham County, Lee County: Greenwood; Moore County, Orange County, Randolph County: North Asheboro *, McCrary *, Westside *, Eastside *, Loflin *, Lindley Park *, Armory *, South Pointe *, Deep River *, East Cedar Grove *, West Cedar Grove *, Coleridge *, West Ramseur *, Staley *, East Ramseur *, Falls *, Franklinville *, Grant *, New Hope *, Richland *, Union *, Liberty *, Providence *, East Randleman *, West Randleman *, Worthville *.

District 17: Anson County, Montgomery County, Richmond County, Scotland County, Stanly County, Union County.

District 18: Bladen County, Brunswick County, Columbus County, New Hanover County: Wilmington #5 *.

District 19: Davidson County: Abbotts Creek *, Thomasville No. 8 *; Guilford County: GB-20 *, GB-27A *, GB-34A *, GB-37A *, GB-39 *, GB-41A *, HP-08 *, HP-16 *, HP-20 *, HP-23 *, HP-24 *, Bruce *, North Center Grove *, South Center Grove *, Clay *, Deep River *, Fentress-1 *, Fentress-2 *, Friendship-1 *, Greene *, Jamestown-3 *, Oak Ridge *, GB-27B *, GB-37B *, GB-27C *; Randolph County: Back Creek *, East Archdale *, West Archdale *, East Trinity *, West Trinity *, Prospect *, Concord *, Level Cross *, Tabernacle *, North New Market *, South New Market *.

District 20: Forsyth County: Abbotts Creek #1 *, Abbotts Creek #2 *, Abbotts Creek #3 *, Belews Creek *, Bethania #1 *, Bethania #2 *, Bethania #3 *, Broadbay #1 *, Broadbay #2 *, Clemmonsville #1 *, Clemmonsville #3 *, Kernersville #1 *, Kernersville #2 *, Kernersville #3 *, Kernersville #4 *, Lewisville #1 *, Lewisville #2 *, Lewisville #3 *, Middlefork #2 *, Middlefork #3 *, Old Richmond *, Old Town #2 *, Old Town #3 *, Salem Chapel #1 *, Salem Chapel #2 *, South Fork #2 *, South Fork #3 *, Vienna #1 *, Vienna #2 *, Ardmore Baptist Church *, Ashley Middle School *, Bethabara Moravian Church *, Bible Wesleyan Church *, Bishop McGuinness *, Bolton Swimming Center *, Brown/Douglas Recreation *, Brunson Elementary School *, Calvary Baptist Church *, Carver High School *, Christ Moravian Church *, Country Club Fire St. *, Covenant Presbyterian Church *, East Winston Library *, Easton Elementary School *, First Christian Church *, Forest Hill Fire Station *, Forest Pk. Elementary School *, Forsyth Tech W. Camp. *, 14th Street Recreation Center *, Greek Orthodox Church *, Hanes Community Center *, Happy Hill Recreation Center *, Hill Middle School *, Jefferson Elementary School *, Kennedy Middle

School *, Latham Elementary School *, Lowrance Middle School *, M. L. King Recreation Center *, Memorial Coliseum *, Messiah Moravian Church *, Miller Park Recreation Center *, Mineral Springs F. St *, Mt. Sinai Church *, Mt. Tabor High School *, New Hope United Methodist Church *, Old Town Presbyterian Church *, Parkland High School *, Parkway United Church *, Philo Middle School *, Polo Park Recreation Center *, Reynolds High School Gym *, Sherwood Forest Elementary School *, South Fork Elem School *, St. Andrews United Methodist *, St. Anne's Episcopal Church *, Summit School *, Trinity Moravian Church *, Trinity United Methodist Church *, Whitaker Elementary School *, Winston Lake Family YMCA *.

District 21: Alamance County, Caswell County, Person County: Bushy Fork, Flat River, Olive Hill, Hurdle Mills.

District 22: Cabarrus County, Rowan County: Bradshaw *, Enochville *, Bostian School *, East Kannapolis *, West Kannapolis *, East Landis *, Barnhardt Mill *, Rockwell *, Bostian Crossroads *, Faith, Morgan I *, Morgan II *, Gold Knob *.

District 23: Davidson County: Boone *, Central *, Cotton *, Southmont *, Healing Springs *, Lexington No. 1 *, Lexington No. 2 *, Lexington No. 4 *, Ward No. 1 *, Ward No. 2 *, Ward No. 3 *, Ward No. 4 *, Ward No. 5 *, Ward No. 6 *, Tyro *, Silver Hill *; Iredell County: Barringer *, Coddle Creek #2 *, Cool Springs *, Turnersburg *; Rowan County: Blackwelder Park *, N. China Grove *, S. China Grove *, West Landis *, Cleveland *, Franklin *, Faith Noncontiguous, Locke *, Sumner *, Mt. Ulla *, East Spencer *, Granite Quarry *, Hatters Shop *, Milford Hills *, Spencer *, Trading Ford, West Innes *, East Ward I *, East Ward II *, North Ward I *, North Ward II *, South Ward *, West Ward I *, West Ward II *, West Ward III *, Trading Ford Noncontiguous A, Scotch Irish *, Steele *, Unity *.

District 24: Cumberland County: Beaver Dam *, Black River *, Linden *, Long Hill *, Cedar Creek *, Judson *, Stedman *, Cross Creek #4 *, Cross Creek #7 *, Cross Creek #8 *, Cross Creek #9 *, Cross Creek #10 *, Cross Creek #11 *, Cross Creek #12 *, Cross Creek #14 *, Cross Creek #15 *, Cross Creek #18 *, Cross Creek #20 *, Cross Creek #21, Cross Creek #22 *, Cross Creek #23 *, Sherwood *, Vander *, Wade *, Alderman *, Manchester *, Pearces Mill #2 *, Pearces Mill #3 *, Pearces Mill #4 *, Cumberland #1 *,

Cumberland #2 *, Hope Mills #1 *, Brentwood *, Montclair *,
Seventy First #2 *, Seventy First #3 *.

District 25: Cleveland County: Shelby #4 *, Polkville *, Falston *,
Lawndale *; Gaston County: Cherryville #1 *, Cherryville #2 *,
Cherryville #3 *, Landers Chapel *, Tryon *, Bessemer City #1 *,
Bessemer City #2 *, Crowders Mtn. *, Dallas #1 *, Dallas #2 *,
Armstrong *, Ashbrook *, Firestone *, Flint Groves *, Gardner Park
*, Grier *, Health Center *, Highland *, Memorial Hall *, Myrtle *,
Ranlo *, Sherwood *, Woodhill *, Victory *, Belmont #1 *,
Cramerton *, Lowell *, McAdenville *; Lincoln County: North Brook
I/II, Crouse, Heavners, Lincolnton/North, Lincolnton/South, Lithia,
Love Memorial.

District 26: Alexander County: Millers township, Taylorsville
township, Wittenberg township; Catawba County.

District 27: Alexander County: Ellendale township, Gwaltneys
township, Little River township, Sharpes township, Sugar Loaf
township; Avery County, Burke County: Drexel #1 *, Drexel #2 *,
Drexel #3 *, Icard #1 *, Icard #2 *, Icard #3 *, Icard #4 *, Icard #5
*, Jonas Ridge *, Linville #1 *, Lovelady #1 *, Lovelady #2 *,
Lovelady #3 *, Lovelady #4 *, Lower Creek *, Lower Fork *,
Morganton #7 *, Smoky Creek *, Upper Creek *, Upper Fork *;
Caldwell County, Iredell County: Bethany *, Chambersburg *,
Concord *, Eagle Mills *, New Hope *, Olin *, Sharpesburg *,
Statesville #1 *, Statesville #2 *, Statesville #3 *, Statesville #4 *,
Statesville #5 *, Statesville #6 *, Union Grove *; Mitchell County,
Wilkes County.

District 28: Buncombe County: Asheville #1 *, Asheville #2 *,
Asheville #3 *, Asheville #4 *, Asheville #5 *, Asheville #6 *,
Asheville #7 *, Asheville #8 *, Asheville #9 *, Asheville #10 *,
Asheville #11 *, Asheville #12 *, Asheville #13 *, Asheville #14 *,
Asheville #15 *, Asheville #16 *, Asheville #17 *, Asheville #18 *,
Asheville #19 *, Asheville #20 *, Asheville #21 *, Beaverdam *,
Biltmore *, Haw Creek *, Hazel #1 *, Hazel #2 *, Reynolds *,
Woodfin *, Averys Creek *, Black Mountain #1 *, Black Mountain
#2 *, Black Mountain #3 *, Black Mountain #4 *, Flat Creek *,
French Broad *, Lower Hominy #1 *, Lower Hominy #2 *, Lower
Hominy #3 *, Upper Hominy #1 *, Upper Hominy #2 *, Ivy #1 *,
Ivy #2 *, Leicester *, West Buncombe *, Limestone #1 *, Riceville
*, Swannanoa #1 *, Swannanoa #2 *, Reems Creek *, Weaverville #1
*, Weaverville #2 *, Sandy Mush *; Burke County: Linville #2 *.

Morganton #1 *, Morganton #3 *, Morganton #4 *, Morganton #5 *, Morganton #6 *, Morganton #8 *, Morganton #9 *, Morganton #10 *, Quaker Meadow #1 *, Quaker Meadow #2 *, Silver Creek #1 *, Silver Creek #2 *, Silver Creek #3 *, Silver Creek #4 *; McDowell County, Madison County, Yancey County.

District 29: Haywood County: Beaverdam township, Cataloochee township, Clyde township, Crabtree township, East Fork township, Fines Creek township, Iron Duff township, Ivy Hill township, Jonathan Creek township, Waynesville township, White Oak township; Henderson County: North Blue Ridge *, Clear Creek *, Armory *, Hendersonville #1 *, Hendersonville #2 *, Hendersonville #3 *, Long John Mountain *, Moores Grove *, Northeast *, Pisgah View *, Northwest Non-contiguous *, Brickton, Brickton Noncontiguous, North Mills River *, South Mills River *; Jackson County: Barkers Creek township, Canada township, Caney Fork township, Cullowhee township, Dillsboro township, Greens Creek township, Hamburg township, Mountain township, Qualla township, River township, Savannah township, Scott Creek township, Sylva township, Webster township; Macon County: Cowee township, Franklin township; Remainder not in District 42; Swain County, Transylvania County: Boyd township, Brevard township.

District 30: Cumberland County: Hope Mills #2 *; Hoke County, Robeson County.

District 31: Guilford County: GB-03 *, GB-04 *, GB-05 *, GB-06 *, GB-07 *, GB-08 *, GB-09 *, GB-19 *, GB-25 *, GB-29 *, GB-30 *, GB-42 *, GB-44 *, GB-45 *, HP-03 *, HP-05 *, HP-06 *, HP-07 *, HP-11 *, HP-12 *, HP-13 *, HP-18 *, HP-21 *, HP-22 *, Gibsonville *, Whitsett *, Jamestown-1 *, Jamestown-2 *, North Jefferson *, South Jefferson *, North Monroe *, South Monroe *, North Sumner *, South Sumner *, GIB-G *.

District 32: Guilford County: GB-01 *, GB-02 *, GB-10 *, GB-11 *, GB-12 *, GB-13 *, GB-14 *, GB-15 *, GB-16 *, GB-17 *, GB-18 *, GB-21 *, GB-22 *, GB-23 *, GB-24A *, GB-26A *, GB-28 *, GB-31 *, GB-32 *, GB-33 *, GB-35A *, GB-36 *, GB-38 *, GB-40A *, GB-43 *, HP-01 *, HP-02 *, HP-04 *, HP-09 *, HP-10 *, HP-14 *, HP-15 *, HP-17 *, HP-19 *, Friendship-2 *, GB-24B *, GB-26B *, GB-34B *, GB-35B *, GB-40B *, GB-41B *, GB-24C *, GB-35C *.

District 33: Mecklenburg County: Charlotte Pct. 11 *, Charlotte Pct. 12 *, Charlotte Pct. 13 *, Charlotte Pct. 14 *, Charlotte Pct. 16 *, Charlotte Pct. 22 *, Charlotte Pct. 25 *, Charlotte Pct. 27 *, Charlotte Pct. 31 *, Charlotte Pct. 39 *, Charlotte Pct. 41 *, Charlotte Pct. 42 *, Charlotte Pct. 50 *, Charlotte Pct. 52 *, Charlotte Pct. 54 *, Charlotte Pct. 55 *, Charlotte Pct. 56 *, Charlotte Pct. 57 *, Charlotte Pct. 58 *, Charlotte Pct. 59 *, Charlotte Pct. 73 *, Charlotte Pct. 75 *, Charlotte Pct. 76 *, Charlotte Pct. 77 *, Charlotte Pct. 87 *, Charlotte Pct. 92 *, Charlotte Pct. 93 *, Charlotte Pct. 97 *, Charlotte Pct. 98 *, LC2, Charlotte Pct. 16 Part.

District 34: Lincoln County: Lowesville, Triangle; Mecklenburg County: Charlotte Pct. 4, Charlotte Pct. 23 *, Charlotte Pct. 24 *, Charlotte Pct. 26 *, Charlotte Pct. 40 *, Charlotte Pct. 53 *, Charlotte Pct. 60, Charlotte Pct. 78 *, Charlotte Pct. 79 *, Charlotte Pct. 80 *, Charlotte Pct. 81 *, Charlotte Pct. 82 *, Charlotte Pct. 89 *, BER *, COR *, CO2 *, DAV *, HUN *, LEM *, LC1 - North, LC1 - South, MC1, MC2, MC1 part, XMC2 Noncontiguous, OAK, PC1 *, PC2 *, SC1, SC2, Charlotte Pct. 105.

District 35: Mecklenburg County: Charlotte Pct. 8 *, Charlotte Pct. 19 *, Charlotte Pct. 32 *, Charlotte Pct. 36 *, Charlotte Pct. 47 *, Charlotte Pct. 48 *, Charlotte Pct. 65 *, Charlotte Pct. 66 *, Charlotte Pct. 67 *, Charlotte Pct. 68 *, Charlotte Pct. 69 *, Charlotte Pct. 70 *, Charlotte Pct. 71 *, Charlotte Pct. 72 *, Charlotte Pct. 74 *, Charlotte Pct. 83 *, Charlotte Pct. 85 *, Charlotte Pct. 86 *, Charlotte Pct. 88 *, Charlotte Pct. 90 *, Charlotte Pct. 91, Charlotte Pct. 94 *, Charlotte Pct. 96 *, CCK *, MA1 *, MA2 *, MA3 *, MA4 *, Charlotte Pct. 102, MH1 *, MH2 *, MH3 *, PVL *, PR1, PR2, PR3, Charlotte Pct. 93 Part, Charlotte Pct. 100 *.

District 36: Wake County: Bartons Creek #1 *, Bartons Creek #2 *, Cary #1 *, Cary #2 *, Cary #3 *, Cary #4 *, Cary #5 *, Cary #6 *, Cary #7 *, Cary #8 *, Cary #9 *, Cary #10 *, House Creek #2 *, House Creek #3 *, House Creek #4 *, House Creek #5 *, House Creek #6 *, Leesville #2 *, Meredith *, Neuse #1 *, Neuse #2 *, New Light #1 *, St. Marys #5 *, Swift Creek #1 *, Swift Creek #2 *, Swift Creek #3 *, Swift Creek #4 *, White Oak #1 *.

District 37: Cleveland County: Holly Springs *, Boiling Springs *, Mrb-Yo *, Pearl *, East Kings Mountain *, West Kings Mountain *, Grover *, Bethware *, Waco *, Shelby #1 *, Shelby #2 *, Shelby #3

*, Shelby #5 *, Shelby #6 *, Shelby #7 *, Shanghai *, Lattimore *, Mulls *, Casar *; Rutherford County: Rutherford County.

District 38: Davidson County: Alleghany *, Arcadia *, Holly Grove *, Liberty *, Denton *, Emmons *, Silver Valley *, Hampton *, Jackson Hill *, Lexington No. 3 *, Welcome *, Midway *, Reeds *, Reedy Creek *, Thomasville No. 1 *, Thomasville No. 2 *, Thomasville No. 3 *, Thomasville No. 4 *, Thomasville No. 5 *, Thomasville No. 7 *, Thomasville No. 9 *, Thomasville No. 10 *, Yadkin College *; Davie County, Forsyth County: Clemmonsville #2 *, Vienna #3 *; Yadkin County.

District 39: Gaston County: Alexis *, High Shoals *, Forest Heights *, Gaston Day *, Robinson *, South Gastonia *, Lucia *, Mt. Holly #1 *, Mt. Holly #2 *, Stanley #1 *, Stanley #2 *, Belmont #2 *, Belmont #3 *, Catawba Heights *, New Hope *, Southpoint *, Union *; Iredell County: Coddle Creek #1 *, Coddle Creek #3 *, Coddle Creek #4 *, Davidson *, Fallstown *, Shiloh *; Lincoln County: Westport, Daniels/Vale, Iron Station, Hickory Grove, Asbury, Salem, Boger City, Buffalo Shoals, Denver, Long Shoals, North Brook III, Pumpkin Center.

District 40: Mecklenburg County: Charlotte Pct. 1 *, Charlotte Pct. 2 *, Charlotte Pct. 3, Charlotte Pct. 5 *, Charlotte Pct. 6 *, Charlotte Pct. 7 *, Charlotte Pct. 9 *, Charlotte Pct. 10 *, Charlotte Pct. 15 *, Charlotte Pct. 17 *, Charlotte Pct. 18 *, Charlotte Pct. 20 *, Charlotte Pct. 21 *, Charlotte Pct. 28 *, Charlotte Pct. 29 *, Charlotte Pct. 30 *, Charlotte Pct. 33 *, Charlotte Pct. 34 *, Charlotte Pct. 35 *, Charlotte Pct. 37 *, Charlotte Pct. 38 *, Charlotte Pct. 43 *, Charlotte Pct. 44 *, Charlotte Pct. 45 *, Charlotte Pct. 46 *, Charlotte Pct. 49 *, Charlotte Pct. 51 *, Charlotte Pct. 61 *, Charlotte Pct. 62 *, Charlotte Pct. 63 *, Charlotte Pct. 64 *, Charlotte Pct. 84 *, Charlotte Pct. 95 *, CO1 *, Charlotte Pct. 104.

District 41: Cumberland County: Westarea *, Cross Creek #1 *, Cross Creek #3 *, Cross Creek #5 *, Cross Creek #6 *, Cross Creek #13 *, Cross Creek #16 *, Cross Creek #17 *, Cross Creek #19 *, Cross Creek #24 *, Cross Creek #2 *, Eastover *, Spring Lake *, Beaver Lake *, Cottonade *, Morganton Road #1 *, Morganton Road #2 *, Seventy First #1 *.

District 42: Buncombe County: Broad River *, Fairview *, Limestone #2 *; Cherokee County, Clay County, Graham County;

Haywood County: Cecil township, Pigeon township; Henderson County: South Blue Ridge *, Bowmans Bluff *, Crab Creek *, Bat Cave *, Edneyville *, Green River *, Raven Rock *, Flat Rock *, Grimesdale *, Horse Shoe *, Laurel Park *, Northwest *, Rugby *, Southeast *, Southwest *, Valley Hill *, Fletcher *, Hoopers Creek *, Park Ridge *, Etowah *; Jackson County: Cashiers township; Macon County: Burningtown township, Cartoogechaye township, Ellijay township, Flats township, Franklin township: Tract 9703: Block Group 6: Block 606B, Block 607C, Block 609B, Block 612B, Block 612C, Block 612D, Block 613, Block 614, Block 615, Block 616, Block 617, Block 618, Block 619A, Block 619B, Block 620, Block 621, Block 624, Block 625, Block 626, Block 627, Block 628, Block 629, Block 630, Block 631, Block 632A, Block 632B, Block 633A, Block 633B; Block Group 8: Block 829, Block 830, Block 831, Block 832B; Tract 9707: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110B; Block Group 2: Block 201A, Block 201B, Block 201C, Block 202A, Block 202B, Block 202C, Block 202D, Block 203, Block 204, Block 208, Block 209; Highlands township, Millshoal township, Nantahala township, Smiths Bridge township, Sugar Fork township; Polk County, Transylvania County: Catheys Creek township, Dunns Rock township, Eastatoe township, Gloucester township, Hogback township, Little River township.

~~(b) The names and boundaries of townships, towns and enumeration districts specified in this section are as they were legally defined and in effect as of January 1, 1980, and recognized in the 1980 U.S. census.~~

~~(c) For Guilford County, precinct boundaries are shown on the maps on file with the State Board of Elections on January 1, 1982, in accordance with G.S. 163-128(b).~~

~~For Mecklenburg County, precinct boundaries are as shown on the current maps in use on January 31, 1984, by the Mecklenburg County Board of Elections under G.S. 163-128(b).~~

~~If any changes in precinct boundaries are made, the areas on the maps shall still remain in the same Senate District.~~

~~The Wake County precinct boundaries are as shown on the current map in use by the Wake County Board of Elections on January 31, 1984, in accordance with G.S. 163-128(b). If changes in precinct boundaries are made, the areas on the map shall still remain in the same Senate District.~~

(b) The names and boundaries of townships, precincts (voting tabulation districts), tracts, block groups, and blocks, specified in this

section are as they were legally defined and recognized in the 1990 U.S. Census, except as provided in subsection (c) of this section. Boundaries are as shown on the IVTD Version of the United States Bureau of the Census 1990 TIGER Files, with such modifications as made by the Legislative Services Office and shown on its computer database as of May 1, 1991, to reflect census blocks divided by prior district boundaries, and precincts added or modified as outlined in subsection (c) of this section.

(c) For Guilford County, precinct boundaries for High Point Precincts 20, 23, and 24 are as modified by the Guilford County Board of Elections and shown on the Legislative Services Office computer database as of May 1, 1991.

For Mecklenburg County, precinct boundaries are as altered by the Mecklenburg County Board of Elections as reported to the Legislative Services Office and shown on the Legislative Services Office computer database as of May 1, 1991.

For Wake County:

- (1) St. Marys Precinct #7 is as created by the Wake County Board of Elections out of St. Marys Precinct #4;
- (2) Raleigh 01-27 Part is an area reported by the Bureau of the Census as part of Raleigh 01-23 but has been put by the Wake County Board of Elections in Raleigh 01-27; and
- (3) VTD ZZZZ has been assigned to the appropriate parts of Wake Forest #1 and Wake Forest #2,

all as shown on the Legislative Services Office computer database as of May 1, 1991.

For Anson, Bertie, Camden, Caswell, Franklin, Gates, Greene, Hertford, Hoke, Lee, Lincoln, Martin, Mitchell, Northampton, Pasquotank, Perquimans, Person, Tyrrell, Vance, Warren, and Yadkin Counties, precincts are as shown on maps on file with the Legislative Services Office as of May 1, 1991, except that:

- (1) In Anson County, Lanesboro #1 and Lanesboro #2 are listed together as Lanesboro #1 and #2;
- (2) In Vance County, where West Henderson II is not contiguous, the northerly part is listed as West Henderson IIA and the southerly part as West Henderson IIB;
- (3) In Perquimans County, computer VTD Code 0005 (Tract 9801, Block 550A) is actually part of Belvidere Precinct and is districted with it notwithstanding any description above;
- (4) In Greene County, Snow Hill Town Satellite is Tract 9503, Block 301A which is a part of Snow Hill Town Precinct entirely surrounded by Sugg Precinct and is districted with Sugg Precinct notwithstanding any description above;

- (5) In Greene County, Snow Hill Town Sat B is Tract 9503, Block 224B which is a part of Snow Hill Town Precinct entirely surrounded by Snow Hill Rural Precinct and is districted with Snow Hill Rural Precinct notwithstanding any description above;
- (6) In Mecklenburg County, Precinct XMC2 Noncontiguous is Tract 55.01, Block 303C, and is districted with Precinct MC1 notwithstanding any description above;
- (7) In Martin County, any listing of VTDs not defined consists of Tract 9705, Block 413 (which is in Poplar Point Precinct), Tract 9704, Block 202 (which is in Goose Nest Precinct), and Tract 9706, Block 168A (which is in Robersonville #2 Precinct), and those blocks are districted with those respective precincts regardless of any listing above;
- (8) In New Hanover County, Tract 123.98, Blocks 307B, 308A, 309, 310A, 311A, and 312A, listed by the Census Bureau as Part of VTD ZZZZ, are districted by this section as part of Wilmington #2.

If any precinct or township boundaries are changed, such changes shall not change the boundaries of the Senatorial Districts, which shall remain the same.

In the case where any individual blocks are listed above, the district allocation of unlisted water blocks shall be as found on maps and statistical reports of the districts on file with the Secretary of State.

(d) If this section does not specifically assign any area within North Carolina to a district, and the area is:

- (1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district;
- (2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 1990 United States Census; or
- (3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-20(h) reads as rewritten:

"(h) Bond of Commissioner of Banks: Surety: Condition: Minimum Penalty. -- Upon taking possession of any bank, the Commissioner of Banks, or the duly appointed agent, shall execute and file a bond payable to the State of North Carolina, with some surety company as surety thereon, with the clerk of the superior court of the county where the bank is located, conditioned upon the faithful performance of all duties imposed by reason of the liquidation of such bank by the said Commissioner of Banks, or the duly appointed agent, or any agent or assistant assisting in the liquidation of the said bank, the penal sum of said bond to be fixed by order of the Commissioner of Banks, which in no case shall be less than five thousand dollars (\$5,000). Any person interested, by motion in the pending action, shall be heard by the resident or presiding judge as to the sufficiency of the bond; the judge hearing the motion may thereupon fix the bond; provided, that where such bank under this section is taken possession of by the Commissioner of Banks, he may, in his discretion with the approval of the State Banking Commission, appoint as his agent with the powers, duties and responsibilities of such agent under this section, the Federal Deposit Insurance Corporation or any corporation or agency established under and by virtue of the laws of the United States of America which is established for the purposes for which the said Federal Deposit Insurance Corporation was created under the Banking Act of 1933, enacted by Congress; and provided further that such appointment may be made when and only when the liabilities of such bank to its depositors are insured by said corporation or agency, either in whole or in part. In the event of such appointment such corporation or agency, with the approval of the Commissioner of Banks, may serve as such agent without giving the bond required under all other circumstances in this subsection. Also, in the event of such appointment, the Commissioner of Banks shall thereafter be forever relieved from any and all responsibility and liability in respect to the liquidation of such bank."

Sec. 2. G.S. 53-47 reads as rewritten:

"§ 53-47. *Limitations on investment in stocks.*

No bank shall make any investment in the capital stock of any other state or national bank: Provided, that nothing herein shall be construed to prevent banks doing business under this Chapter from subscribing to or purchasing, upon such terms as may be agreed upon, the capital stock of clearing corporations as defined in G.S. 25-8-102(3), the capital stock of banks organized under that act of Congress known as the 'Edge Act', or the capital stock of central reserve banks whose capital stock exceeds one million dollars

~~(\$1,000,000).~~ (\$1,000,000), or capital stock of the Federal Home Loan Bank. To constitute a central reserve bank as contemplated by this Chapter, at least fifty percent (50%) of the capital stock of such bank shall be owned by other banks. The investment of any bank in the capital stock of such central reserve bank or bank organized under the act of Congress commonly known as the 'Edge Act,' shall at no time exceed ten percent (10%) of the paid-in capital and permanent surplus of the bank making same. No bank shall invest more than seventy-five percent (75%) of its unimpaired capital fund in the stocks of other corporations, firms, partnerships, or companies, unless such stock is purchased to protect the bank from loss. The foregoing limitation shall not apply to stock or ownership interests acquired in corporations, firms, partnerships or companies which hold banking premises or which are bank operating subsidiaries of such bank. The term 'invest' shall be deemed to include operating a business entity acquired by the bank, provided, however, that no bank shall make any such investment resulting in operations which are not closely related to banking without the prior written approval of the Commissioner of Banks. The Commissioner of Banks shall monitor the impact of investment activities of banks under this section on the safety and soundness of such banks. Any stocks owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the same, and if not so disposed of they shall be charged to profit and loss account, and no longer carried on the books as an asset. The limit of time in which said stocks shall be disposed of or charged off the books of the bank may be extended by the Commissioner of Banks if in his judgment it is for the best interest of the bank that such extension be granted; provided that the limitations imposed in this section on the ownership of stock in or securities of corporations is suspended to the extent (and to that extent only) that any bank operating under the supervision of the Commissioner of Banks may subscribe for and purchase shares of stock in or debentures, bonds or other types of securities of any corporation organized under the laws of the United States of America for the purpose of insuring to depositors a part or all of their funds on deposit in banks where and to such extent as such stock or security ownership is required in order to obtain the benefits of such deposit insurance for its depositors."

Sec. 3. G.S. 53-59 is repealed.

Sec. 4. G.S. 53-87 reads as rewritten:

"§ 53-87. *Directors may declare dividends.*

The board of directors of any bank may declare a dividend of so much of its undivided profits as they may deem expedient, subject to the requirements hereinafter provided. When the surplus of any bank

having a capital stock of fifteen thousand dollars (\$15,000) or more is less than fifty percent (50%) of its paid-in capital stock, such bank shall not declare any dividend until it has transferred from undivided profits to surplus twenty-five percent (25%) of said undivided profits, or any lesser percentage that may be required to restore the surplus to an amount equal to fifty percent (50%) of the paid-in capital stock. When the surplus of any bank having a capital stock of less than fifteen thousand dollars (\$15,000) is less than one hundred percent (100%) of its paid-in capital stock, such bank shall not declare any dividend until it has transferred from undivided profits to surplus fifty percent (50%) of said undivided profits, or any lesser percentage that may be required to restore the surplus to an amount equal to one hundred percent (100%) of the paid-in capital stock. In order to ascertain the undivided profits from which such dividend may be made, there shall be charged and deducted from the actual profits:

- (1) All ordinary and extraordinary expenses, paid or incurred, in managing the affairs and transacting the business of the bank;
- (2) Interest paid or then due on debts which it owes;
- (3) All taxes due;
- (4) All overdrafts over one thousand dollars (\$1,000) which have been standing on the books of the bank for a period of 60 days or longer;
- (5) All losses sustained by the bank. In computing the losses, there shall be included debts owing the bank which have become due and are not in process of collection, and on which interest for one year or more is due and unpaid, unless said debts are well secured; and debts reduced to final judgments which have been unsatisfied for more than one year and on which no interest has been paid for a period of one year, unless said judgments are well secured.
- (6) All investments carried on its books, which are prohibited under the provisions of this Chapter, or rules and regulations made by the Commissioner of Banks, pursuant to the powers conferred under this Chapter."

Sec. 5. Article 7 of Chapter 53 is amended by adding a new section to read:

"§ 53-91.1. Assets to be written off.

Every bank doing business under this Chapter shall be required to write off any asset, or portion thereof, which, following the most recent report of examination issued by the Commissioner of Banks, is classified as uncollectible. Provided, however, such asset need not be written off if the same is secured by collateral acceptable to the Commissioner."

Sec. 6. Article 8 of Chapter 53 of the General Statutes is amended by adding two new sections to read:

" § 53-107.1. Administrative orders; penalties for violation.

(a) In addition to any other powers conferred by this Chapter, the Commissioner shall have the power to:

- (1) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee to cease and desist violating any provision of this Chapter or any lawful regulation issued thereunder; and
- (2) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of a depositor.

(b) Consistent with Article 3A of Chapter 150B of the General Statutes, notice and opportunity for hearing shall be provided before any of the foregoing actions shall be undertaken by the Commissioner. Provided, however, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action, but shall promptly afford a subsequent hearing upon application to rescind the action taken.

(c) The Commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the Commissioner.

(d) The Commissioner may impose a civil money penalty of not more than one thousand dollars (\$1,000) for each violation by any bank, trust company, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (1) of subsection (a) of this section. Provided further, the Commissioner may impose a civil money penalty of not more than five hundred dollars (\$500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any director, officer, or employee violates a cease and desist order issued under subdivision (2) of subsection (a) of this section. All civil money penalties collected under this section shall be deposited in the General Fund.

" § 53-107.2. Review by the Banking Commission; additional penalties.

(a) Administrative orders issued by the Commissioner of Banks and civil money penalties imposed for violation of such orders shall be subject to review by the Banking Commission which shall have power to amend, modify, or disapprove the same at any regular or special meeting.

(b) Notwithstanding any penalty imposed by the Commissioner of Banks, the Banking Commission may after notice of and opportunity for hearing, impose, enter judgment for, and enforce by appropriate process, a penalty of not more than ten thousand dollars (\$10,000) against any bank, trust company, or subsidiary thereof, or against any of its directors, officers, or employees for violating any lawful orders of the Commission or Commissioner of Banks. All civil money penalties collected under this section shall be deposited in the General Fund."

Sec. 7. G.S. 53-110 reads as rewritten:

"§ 53-110. Banking Commission to prescribe books, records, etc.; retention, reproduction and disposition of records.

(a) Whenever in its judgment it may appear to be advisable, the State Banking Commission may issue such rules, instructions, and regulations prescribing the manner of keeping books, accounts, and records of banks as will tend to produce uniformity in the books, accounts, and records of banks of the same class.

(b) The following provisions shall be applicable to banks and trust companies operating under Chapter 53 of the General Statutes and amendments thereto, and to national banking associations insofar as this section does not contravene paramount federal law:

- (1) Each bank shall retain permanently the minute books of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, and all records which the Banking Commission shall in accordance with the terms of this section require to be retained permanently.
- (2) All other bank records shall be retained for such periods as the Banking Commission shall in accordance with the terms of this section prescribe.
- (3) The Banking Commission shall from time to time issue regulations classifying all records kept by banks and prescribing the period for which records of each class shall be retained. Such periods may be permanent or for a lesser term of years. Such regulations may from time to time be amended or repealed, but any amendment or repeal shall not affect any action taken prior to such amendment or repeal. Prior to issuing any such regulations the Commission shall consider:
 - a. Actions at law and administrative proceedings in which the production of bank records might be necessary or desirable;
 - b. State and federal statutes of limitation applicable to such actions or proceedings;

- c. The availability of information contained in bank records from other sources; and
 - d. Such other matters as the Banking Commission shall deem pertinent in order that its regulation will require banks to retain their records for as short a period as is commensurate with the interest of bank customers and stockholders and of the people of this State in having bank records available.
- (4) Any bank may cause any or all records kept by it to be recorded, copied or reproduced by any photographic, photostatic or miniature photographic or reproduction process of any kind which is capable of conversion into written form within a reasonable time process and which correctly, accurately, and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material.
- (5) Any such photographic, photostatic or miniature photographic copy or reproduction of any kind, including electronic or computer-generated data, which is capable of conversion into written form within a reasonable time, shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts and administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such photographic copy or reproduction shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original record.
- (6) Any bank may dispose of any record which has been retained for the period prescribed by the Banking Commission or in accordance with the terms of this section for retention of records for its class."

Sec. 8. G.S. 53-84 reads as rewritten:

"§ 53-84. *Depositories designated by directors.*

By resolution of the board of directors, other banks organized under the laws of this State, or of another state, or ~~of the National Banking Act of the United States~~ under the laws of the United States, shall be designated as depositories or reserve banks in which a part of such bank's reserve shall be deposited, subject to payment on demand. A copy of such resolution shall, upon its adoption, be forthwith certified to the Commissioner of Banks and the depository so designated shall be subject to the approval of the Commissioner of Banks. For causes which he may deem adequate, the Commissioner of Banks shall have authority at any time to withdraw such approval.

A bank may deposit funds in a bank of a foreign country, but such deposits shall not constitute any part of its reserve as defined in G.S. 53-51."

Sec. 9. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

S.B. 58

CHAPTER 678

AN ACT TO AUTHORIZE QUALIFIED DENTISTS TO ADMINISTER GENERAL ANESTHESIA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-29(b) reads as rewritten:

"(b) A person shall be deemed to be practicing dentistry in this State who does, undertakes or attempts to do, or claims the ability to do any one or more of the following acts or things which, for the purposes of this Article, constitute the practice of dentistry:

- (1) Diagnoses, treats, operates, or prescribes for any disease, disorder, pain, deformity, injury, deficiency, defect, or other physical condition of the human teeth, gums, alveolar process, jaws, maxilla, mandible, or adjacent tissues or structures of the oral cavity;
- (2) Removes stains, accretions or deposits from the human teeth;
- (3) Extracts a human tooth or teeth;
- (4) Performs any phase of any operation relative or incident to the replacement or restoration of all or a part of a human tooth or teeth with any artificial substance, material or device;
- (5) Corrects the malposition or malformation of the human teeth;
- (6) Administers an anesthetic of any kind in the treatment of dental or oral diseases or physical conditions, or in preparation for or incident to any operation within the oral cavity; provided, however, that this subsection shall not apply to a lawfully qualified nurse or anesthetist who administers such anesthetic under the supervision and direction of a licensed dentist or physician;
- (6a) Independently administers anesthetics of any kind in an accredited hospital facility of not more than one-hundred forty-four (144) beds and who has successfully completed a residency in anesthesiology approved by the American Society of Anesthesiologists at a medical school accredited

by the Liaison Commission on Medical Education of the Association of Medical Colleges, and who is certified by the National Board of Anesthesiology.

- (7) Takes or makes an impression of the human teeth, gums or jaws;
- (8) Makes, builds, constructs, furnishes, processes, reproduces, repairs, adjusts, supplies or professionally places in the human mouth any prosthetic denture, bridge, appliance, corrective device, or other structure designed or constructed as a substitute for a natural human tooth or teeth or as an aid in the treatment of the malposition or malformation of a tooth or teeth, except to the extent the same may lawfully be performed in accordance with the provisions of G.S. 90-29.1 and 90-29.2;
- (9) Uses a Roentgen or X-ray machine or device for dental treatment or diagnostic purposes, or gives interpretations or readings of dental Roentgenograms or X rays;
- (10) Performs or engages in any of the clinical practices included in the curricula of recognized dental schools or colleges;
- (11) Owns, manages, supervises, controls or conducts, either himself or by and through another person or other persons, any enterprise wherein any one or more of the acts or practices set forth in subdivisions (1) through (10) above are done, attempted to be done, or represented to be done;
- (12) Uses, in connection with his name, any title or designation, such as 'dentist,' 'dental surgeon,' 'doctor of dental surgery,' 'D.D.S.,' 'D.M.D.,' or any other letters, words or descriptive matter which, in any manner, represents him as being a dentist able or qualified to do or perform any one or more of the acts or practices set forth in subdivisions (1) through (10) above;
- (13) Represents to the public, by any advertisement or announcement, by or through any media, the ability or qualification to do or perform any of the acts or practices set forth in subdivisions (1) through (10) above."

Sec. 2. This act is effective upon ratification and expires July 1, 1996.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

S.B. 70

CHAPTER 679

AN ACT TO AUTHORIZE FOREIGN BANKING OFFICES IN
NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 18A.

"North Carolina International Banking Act.

" § 53-232.1. Title and scope.

(a) This act shall be known and cited as the North Carolina International Banking Act.

(b) This Article is intended to set forth the terms and conditions under which an international banking corporation may enter and do business in North Carolina.

" § 53-232.2. Definitions.

(a) The following definitions apply in this Article:

- (1) Commissioner. The North Carolina Commissioner of Banks.
- (2) Federal international bank institution. A branch, agency, or representative office of an international banking corporation established and operating under the federal International Banking Act of 1978, 12 U.S.C. §§ 3101 et seq., as amended, and its regulations.
- (3) Foreign country. A country other than the United States, but including a territory or possession of the United States.
- (4) International bank agency. A business or any part of a banking business conducted in this State or through an office located in this State, other than a federal international bank institution, which exercises powers as set forth in G.S. 53-232.9(f) on behalf of an international banking corporation.
- (5) International bank branch. A business or any part of a banking business conducted in this State or through an office located in this State, other than a federal international bank institution, which exercises powers as set forth in G.S. 53-232.9(e) on behalf of an international banking corporation.
- (6) International banking corporation. A banking corporation organized and licensed under the laws of a foreign country or a political subdivision of a foreign country.
- (7) International representative office. A business location of a representative of an international banking corporation, other than a federal international bank institution, established to act in a liaison capacity with existing and potential customers of the international banking corporation and to generate new

loans and other activities for the international banking corporation that is operating outside the State.

(b) Legal and financial terms used in this Article refer to equivalent terms used by the country in which the international banking corporation is organized.

" § 53-232.3. Authority to establish and operate federal international bank institutions, international bank branches, international bank agencies, and international representative offices.

(a) An international banking corporation with a home state other than North Carolina may establish and operate, directly or indirectly, a federal international bank institution in this State in accordance with applicable federal law.

(b) An international banking corporation with no home state may establish and operate, directly or indirectly, a federal international bank institution in this State in accordance with applicable federal law.

(c) An international banking corporation with a home state other than North Carolina may establish and operate, directly or indirectly, an international bank branch, an international bank agency, or an international representative office in accordance with this Article and applicable federal law.

(d) An international banking corporation with no home state may establish and operate, directly or indirectly, an international bank branch, an international bank agency, or an international representative office in accordance with this Article and applicable federal law.

(e) For the purposes of this section, the home state of an international banking corporation that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination of branches, agencies, subsidiary commercial lending companies, or subsidiary banks in more than one state is whichever of the states is so elected by the international banking corporation. If the international banking corporation does not elect a home state, the Board of Governors of the Federal Reserve System or the Commissioner, as applicable, shall elect the home state.

" § 53-232.4. Application of this Chapter.

(a) International banking corporations, other than federal international bank institutions, are subject to Articles 1 through 14 and Articles 17 and 18 of this Chapter, except where it appears, from the context or otherwise, that a provision is clearly applicable only to banks or trust companies organized under the laws of this State or the United States. An international banking corporation has no greater right under, or by virtue of, this Article than is granted to banks organized under the laws of this State.

(b) Nothing in this Article is construed as granting any authority, directly or indirectly, for a domestic bank or domestic bank holding company, the operations of which are conducted principally outside this State, to operate a branch in this State or to acquire, directly or indirectly, any voting shares of, or interest in, or all or substantially all of the assets of a bank in this State.

" § 53-232.5. Application of the North Carolina Business Corporation Act.

Notwithstanding the definition of the term 'foreign corporation' in G.S. 55-1-40(10), Article 15 of Chapter 55, relating to foreign corporations, where it is not inconsistent with Chapter 53, shall apply to all international banking corporations doing business in this State.

" § 53-232.6. Requirements for carrying on banking business.

(a) No international banking corporation, other than a federal international bank institution, shall transact a banking business or maintain in this State any office for carrying on a banking business or any part of a banking business unless the corporation:

- (1) Is authorized by its Articles to carry on a banking business and has complied with the laws of the country under which it is chartered;
- (2) Has furnished to the Commissioner any proof as to the nature and character of its business and as to its financial condition as the Commissioner may require;
- (3) Has filed with the Commissioner:
 - a. A duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the Commissioner its true and lawful attorney upon whom all process in any action against it may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the State;
 - b. A written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person to whom the Commissioner shall forward the process; and
 - c. A certified copy of that information required to be supplied by foreign corporations to the Secretary of State by Article 15 of Chapter 55 of the General Statutes.
- (4) Has paid to the Commissioner the fee established by regulation to defray the cost of investigation and supervision; and
- (5) Has received a license duly issued to it by the Commissioner.

(b) The Commissioner shall not issue a license to an international banking corporation unless it is chartered in a foreign country that permits banks chartered in the United States or any of its states to establish similar facilities in that country.

" § 53-232.7. Actions against international banking corporations.

(a) A resident of this State may maintain an action against an international banking corporation doing business in this State for any cause of action. For purposes of this subsection, the term 'resident of this State' includes any individual domiciled in this State, or any corporation, partnership, or trust formed under the laws of this State.

(b) An international banking corporation or a nonresident of this State may maintain an action against an international banking corporation doing business in this State in the following cases only:

- (1) Where the action is brought to recover damages for the breach of a contract made or to be performed within this State or relating to property situated within this State at the time of the making of the contract;
- (2) Where the subject matter of the litigation is situated within this State;
- (3) Where the cause of action arose within this State, except where the object of the action is to affect the title of real property situated outside this State; or
- (4) Where the action is based on a liability for acts done within this State by an international banking corporation or its international bank agency, international bank branch, or international representative office.

(c) The limitations contained in subsection (b) of this section do not apply to a corporation formed and existing under the laws of the United States and that maintains an office in this State.

" § 53-232.8. Application for license.

(a) Every international banking corporation, before being licensed by the Commissioner to transact a banking business in this State as an international bank branch or as an international bank agency or before maintaining in this State any office to carry on a banking business or any part of a banking business, shall subscribe and acknowledge and submit to the Commissioner, at the Commissioner's office, a separate application, in duplicate, which shall state:

- (1) The name of the international banking corporation;
- (2) The location by street and post office address and county where its business is to be transacted in this State and the name of the person who is in charge of the business and affairs of the office;
- (3) The location where its initial registered office will be located in this State;

- (4) The amount of its capital actually paid in and the amount subscribed for and unpaid; and
- (5) The actual value of the assets of the international banking corporation, which must be at least fifty million dollars (\$50,000,000) in excess of its liabilities, and a complete and detailed statement of its financial condition as of a date within 60 days before the date of the application; except that the Commissioner may, when necessary or expedient, accept the statement of financial condition as of a date within 120 days before the date of the application.

(b) When the application is submitted to the Commissioner, the corporation shall also submit a duly authenticated copy of its Articles of Incorporation, or equivalent corporate document, and an authenticated copy of its bylaws, or an equivalent of the bylaws that is satisfactory to the Commissioner, and pay an investigation and supervision fee to be established by regulation. The international banking corporation shall also submit to the Commissioner a certificate issued by the banking or supervisory authority of the country in which the international banking corporation is organized and licensed stating that the international banking corporation is duly organized and licensed and lawfully existing in good standing, and is empowered to conduct a general banking business.

(c) The Commissioner may approve or disapprove the application, but the Commissioner shall not approve the application unless, in the Commissioner's opinion, the applicant meets every requirement of this Article and any other applicable provision of this Chapter and any regulations adopted under this Chapter. The Commissioner may specify any conditions as the Commissioner deems appropriate, considering the public interest, the need to maintain a sound and competitive banking system, and the preservation of an environment conducive to the conduct of an international banking business in this State.

(d) An international banking corporation may operate more than one international bank branch in this State, each at a different place of business, provided each branch office is separately licensed to transact a banking business or any part of a banking business under this Article. An international banking corporation may operate more than one international bank agency in this State, each at a different place of business, provided each agency office is separately licensed to transact a banking business or any part of a banking business under this Article.

(e) Notwithstanding subsection (d) of this section, no international banking corporation licensed to maintain one or more international bank branches in this State shall be licensed to maintain an

international bank agency in this State except upon termination of the operation of its international bank branches under G.S. 53-232.13(b), and no international banking corporation licensed to maintain one or more international bank agencies in this State shall be licensed to maintain an international bank branch in this State except upon the termination of the operation of its international bank agencies under G.S. 53-232.13(b).

"§ 53-232.9. Effect, renewal, and revocation of licenses; permissible activities.

(a) When the Commissioner has issued a license to an international banking corporation, it may engage in the business authorized by this Article at, and only at, the office specified in the license for a period not exceeding one year from the date of the license or until the license is surrendered or revoked. No license is transferable or assignable. Every license shall be, at all times, conspicuously displayed in the place of business specified in the license.

(b) The international banking corporation may renew the license annually upon application to the Commissioner upon forms to be supplied by the Commissioner for that purpose. The application for renewal shall be submitted to the Commissioner no later than 60 days before the expiration of the license. The license may be renewed by the Commissioner upon a determination, with or without examination, that the international banking corporation is in a safe and satisfactory condition, that it has complied with applicable requirements of law, and that the renewal of the license is proper and has been duly authorized by proper corporate action. Each application for renewal of an international banking corporation license shall be accompanied by an annual renewal fee to be determined by the Commissioner by regulation.

(c) The Commissioner may revoke the license, with or without examination, upon a determination that the international banking corporation does not meet the criteria established by subsection (b) of this section for renewal of licenses.

(d) If the Commissioner refuses to renew the license and, as a result, the license is revoked, all the rights and privileges of the international banking corporation to transact the business for which it was licensed shall immediately cease, and the license shall be surrendered to the Commissioner within 24 hours after written notice of the decision has been mailed by the Commissioner to the registered office of the international banking corporation set forth in its application, as amended, or has been personally delivered to any officer, director, employee, or agent of the international banking corporation who is physically present in this State.

(e) An international banking corporation licensed under this Article to carry on business in this State as an international bank branch may conduct a general banking business, including the right to receive deposits and exercise fiduciary powers, through its international bank branch in the same manner as banks existing under the laws of this State and under applicable federal law.

(f) An international banking corporation licensed under this Article to carry on business in this State as an international bank agency may conduct a general banking business through its international bank agency in the same manner as banks existing under the laws of this State, except that no international banking corporation shall, through its bank agency, exercise fiduciary powers or receive deposits, but may maintain for the account of others credit balances incidental to or arising out of the exercise of its lawful powers.

" § 53-232.10. Securities, etc., to be held in this State.

(a) An international banking corporation licensed under this Article shall hold, at its office in this State, currency, bonds, notes, debentures, drafts, bills of exchange, or other evidence of indebtedness or other obligations payable in the United States or in United States funds or, with the prior approval of the Commissioner, in funds freely convertible into United States funds in an amount that is not less than one hundred eight percent (108%) of the aggregate amount of liabilities of the international banking corporation payable at or through its office in this State or as a result of the operations of the international bank branch or international bank agency, including acceptances, but excluding:

(1) Accrued expenses; and

(2) Amounts due and other liabilities to other offices, agencies, or branches of and wholly owned, except for a nominal number of directors' shares, subsidiaries of the international banking corporation.

(b) For the purpose of this Article, the Commissioner shall value marketable securities at principal amount or market value, whichever is lower, and may determine the value of any nonmarketable bond, note, debenture, draft, bill of exchange, or other evidence of indebtedness or of any other obligation held by or owed to the international banking corporation in this State. In determining the amount of assets for the purpose of computing the above ratio of assets, the Commissioner may exclude any particular assets, but may give credit, subject to any rules adopted by the Commissioner, to deposits and credit balances with unaffiliated banking institutions outside this State if the deposits or credit balances are payable in United States funds or in currencies freely convertible into United States funds. In no case shall credit given for the deposits and credit

balances exceed in aggregate amounts any percentage, but not less than eight percent (8%), as the Commissioner may from time to time prescribe, of the aggregate amount of liabilities of the international banking corporations.

(c) If, by reason of the existence or the potential occurrence of unusual or extraordinary circumstances, the Commissioner considers it necessary or desirable for the maintenance of a sound financial condition, for the protection of creditors and the public interest, and to maintain public confidence in the business of the international bank agency of the international banking corporation, the Commissioner may reduce the credit to be given as provided in this section for deposits and credit balances with unaffiliated banking institutions outside this State and may require the assets to be held in this State under this Article with any bank or trust company existing under the laws of this State that the international banking corporation designates and the Commissioner approves.

(d) An international bank branch and international bank agency shall file any reports with the Commissioner as the Commissioner may require in order to determine compliance by the international bank branch or international bank agency with this section.

" § 53-232.11. Financial certification; restrictions on investments, loans, and acceptances.

(a) Before opening an office in this State, and annually thereafter so long as a bank office is maintained in this State, an international banking corporation licensed under this Article shall certify to the Commissioner the amount of its paid-in capital, its surplus, and its undivided profits, each expressed in the currency of the country of its incorporation. The dollar equivalent of this amount, as determined by the Commissioner, is considered to be the amount of its capital, surplus, and undivided profits.

(b) Purchases and discounts of bills of exchange, bonds, debentures, and other obligations and extensions of credit and acceptances by an international bank agency within this State are subject to the same limitations as to amount in relation to capital, surplus, and undivided profits as are applicable to banks organized under the laws of this State. With the prior approval of the Commissioner, the capital notes and capital debentures of the international banking corporation may be treated as capital in computing the limitations.

" § 53-232.12. Reports.

(a) An international banking corporation licensed under this Article shall, at the times and in the form prescribed by the Commissioner, make written reports in the English language to the Commissioner, under the oath of one of its officers, managers, or agents transacting

business in this State, showing the amount of its assets and liabilities and containing any other matters required by the Commissioner. If an international banking corporation fails to make a report, as directed by the Commissioner, or if a report contains a false statement knowingly made, this is grounds for revocation of the license of the international banking corporation.

(b) G.S. 53-105 shall not apply to international banking corporations.

" § 53-232.13. Dissolution.

(a) When an international banking corporation licensed to maintain an international bank branch or an international bank agency in this State is dissolved or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, a certificate of the official responsible for records of banking corporations of the jurisdiction of incorporation of the international banking corporation attesting to the occurrence of this event or a certified copy of an order or decree of a court of the jurisdiction directing the dissolution of the international banking corporation or the termination of its existence or the cancellation of its authority shall be delivered to the Commissioner. The filing of the certificate, order, or decree has the same effect as the revocation of the international banking corporation's license as provided in G.S. 53-232.9(d).

(b) An international banking corporation that proposes to terminate the operation in this State of an international bank branch, an international bank agency, or an international representative office in this State shall comply with any procedures as the Commissioner may prescribe by rule to insure an orderly cessation of business in a manner that is not harmful to the public interest and shall surrender its license to the Commissioner or shall surrender its right to maintain an office in this State, as applicable.

(c) The Commissioner shall continue as agent of the international banking corporation upon whom process against it may be served in any action based upon any liability or obligation incurred by the international banking corporation within this State before the filing of the certificate, order, or decree; and the Commissioner shall promptly cause a copy of the process to be mailed by registered or certified mail, return receipt requested, to the international banking corporation at the post office address specified for this purpose on file with the Commissioner's office.

" § 53-232.14. International representative offices.

(a) An international banking corporation that does not transact a banking business or any part of a banking business in or through an office in this State, but maintains an office in this State for other

purposes is considered to have an international representative office in this State.

(b) An international representative office located in this State shall register with the Commissioner annually on forms prescribed by the Commissioner. The registration shall be filed before January 31 of each year, shall be accompanied by a registration fee prescribed by regulation, and shall list the name of the local representative, the street address of the office, and the nature of the business to be transacted in or through the office.

(c) The Commissioner may review the operations of an international representative office annually or at any greater frequency as is necessary to assure that the office does not transact a banking business.

(d) An international banking corporation desiring to convert its existing registered international representative office to a licensed international bank branch or licensed international bank agency shall submit to the Commissioner the application required by G.S. 53-232.8, and is required to meet the minimum criteria for licensing of an international bank branch or licensed international bank agency under this Article.

(e) An international representative office may act in a liaison capacity with existing and potential customers of an international banking corporation and in undertaking these activities may, through its employees or agents, without limitation, solicit loans, assemble credit information, make proprietary inspections and appraisals, complete loan applications and other preliminary paperwork in preparation for making a loan, but may not solicit or accept deposits. No international representative office shall conduct any banking business or part of a banking business in this State.

"§ 53-232.15. Rules.

The Banking Commission may adopt rules necessary to implement this Article.

"§ 53-232.16. Cease and desist.

Upon a finding that any action of an international banking corporation or its international banking agency, international banking branch, or international representative office subject to this Article may be in violation of any North Carolina banking law, the Commissioner, after a reasonable notice to the international banking corporation, international bank agency, international bank branch, or international representative office and an opportunity for it to be heard, may order it to cease and desist from the action. If the international banking corporation, international bank agency, international bank branch, or international representative office fails to appeal the decision in accordance with G.S. 53-232.17 and continues

to engage in the action in violation of the Commissioner's order to cease and desist the action, it is subject to a penalty of one thousand dollars (\$1,000), to be recovered with costs by the Commissioner in any court of competent jurisdiction in a civil action prosecuted by the Commissioner. This penalty is in addition to and not in lieu of any other law applicable to the failure of an international banking corporation, international bank agency, international bank branch, or international representative office to comply with an order of the Commissioner. All civil money penalties collected under this section shall be deposited in the General Fund.

" § 53-232.17. *Appeal of Commissioner's decision.*

Notwithstanding any other law, an aggrieved party may, within 30 days after final decision of the Commissioner and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days thereafter. The record shall include all memoranda, briefs, and any other documents, data, information, or evidence submitted by any party to the proceeding, except for material such as trade secrets normally not available through commercial publication of which the party has made a claim of confidentiality and requested exclusion from the record which the Commissioner deems confidential. All factual information contained in any report of examination or investigation submitted to or obtained by the Commissioner's staff is also made a part of the record unless deemed confidential by the Commissioner."

Sec. 2. G.S. 7A-29(a). as amended by Chapter 546 of the 1991 Session Laws, reads as rewritten:

"(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection ~~(b)~~, (b) of this section, the Department of Human Resources under G.S. 131E-188(b), the Commissioner of Banks under Articles 17, 18, 18A, and 21 of Chapter 53 of the General Statutes, the Administrator of Savings and Loans under Article 3A of Chapter 54B of the General Statutes, the North Carolina Industrial Commission, the North Carolina State Bar under G.S. 84-28, the Property Tax Commission under G.S. 105-290 and G.S. 105-342, or an appeal from the Commissioner of Insurance under G.S. 58-9.4, or from the Governor's Waste Management Board under G.S. 130A-293 and G.S. 104E-6.2, appeal as of right lies directly to the Court of Appeals."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

AN ACT TO CREATE A SAVINGS BANK CHARTER IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes of North Carolina are amended by adding a new Chapter 54C to read as follows:

"ARTICLE 1.

"General Provisions.

" § 54C-1. Title.

This Chapter shall be known and may be cited as 'Savings Banks.'

" § 54C-2. Purpose.

The purposes of this Chapter are:

- (1) To provide for the safe and sound conduct of the business of savings banks, the conservation of their assets, and the maintenance of public confidence in savings banks.
- (2) To provide for the protection of the interests of customers and members.
- (3) To provide the opportunity for savings banks to remain competitive with each other and with other depository institutions existing under other laws of this and other states and the United States.
- (4) To provide for an increase in the savings base of the State and local control of the means of finance and accumulation of capital.
- (5) To provide the opportunity for the management of savings banks to exercise prudent business judgment in conducting the affairs of savings banks to the extent compatible with the purposes recited in this section.
- (6) To provide adequate rulemaking power and administrative discretion so that the regulation and supervision of savings banks are readily responsive to changes in local economic conditions and depository institution practices.

" § 54C-3. Applicability of Chapter.

This Chapter, unless the context otherwise specifies, shall apply to all State savings banks.

" § 54C-4. Definitions and application of terms.

(a) The term 'savings and loan association' when used in the General Statutes shall include savings banks chartered under this Chapter.

(b) Unless the context otherwise requires, the following definitions apply in this Chapter:

- (1) Administrator. The Administrator of the Savings Institution Division.
- (2) Affiliate. Any person or corporation that controls, is controlled by, or is under common control with a savings institution.
- (3) Associate. Any person's relationship with (i) any corporation or organization, other than the applicant or a majority-owned subsidiary of the applicant, of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities, (ii) any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity, and (iii) any relative or spouse who lives in the same house as that person, or any relative of that person's spouse who lives in the same house as that person, or who is a director or officer of the applicant or any of its parents or subsidiaries.
- (4) Association. A savings and loan association as defined by G.S. 54B-4(b)(5).
- (5) Branch office. An office of a savings bank, other than its principal office, that renders savings institution services.
- (6) Capital stock. Securities that represent ownership of a stock savings bank.
- (7) Certificate of incorporation or charter. The document that represents the corporate existence of a State savings bank.
- (8) Commission. The North Carolina Savings Institutions Commission.
- (9) Conflict of interest. A matter before the board of directors in which one or more of the directors, officers, or employees has a direct or indirect financial interest in its outcome.
- (10) Control. The power, directly or indirectly, to direct the management or policies of a savings bank or to vote twenty-five percent (25%) or more of any class of voting securities for a savings bank.
- (11) Depository institution. A person, firm, or corporation engaged in the business of receiving, soliciting, or accepting money or its equivalent on deposit, or of lending money or its equivalent, or of both.
- (12) Disinterested directors. Those directors who have absolutely no direct or indirect financial interest in the matter before them.

- (13) Dividends on stock. The earnings of a savings bank paid out to holders of capital stock in a stock savings bank.
- (14) Division. The Savings Institutions Division.
- (15) Examination and investigation. A supervisory inspection of a savings bank or proposed savings bank that may include inspection of every relevant piece of information including subsidiary or affiliated businesses.
- (16) Immediate family. One's spouse, father, mother, children, brothers, sisters, and grandchildren; and the father, mother, brothers, and sisters of one's spouse; and the spouse of one's child, brother, or sister.
- (17) Insurance of deposit accounts. Insurance on a savings bank's deposit accounts when the beneficiary is the holder of the insured account.
- (18) Loan production office. An office of a savings bank other than the principal or branch offices whose activities are limited to the generation of loans.
- (19) Members. Deposit account holders and borrowers in a State mutual savings bank.
- (20) Mutual savings bank. A savings bank owned by members of the savings bank and organized under this Chapter.
- (21) Net worth. A savings bank's total assets less total liabilities as defined by generally accepted accounting principles plus unallocated, general loan loss reserves.
- (22) Original incorporators. One or more natural persons who are the organizers of a State savings bank responsible for the business of a proposed savings bank from the filing of the application to the Commission's final decision on the application.
- (23) Plan of conversion. A detailed outline of the procedure of the conversion of a savings institution from one to another regulatory authority, from one to another form of ownership, or from one to another charter.
- (24) Principal office. The office that houses the headquarters of a savings bank.
- (25) Proposed savings bank. An entity in organizational procedures before the Commission's final decision on its charter application.
- (26) Registered agent. The person named in the certificate of incorporation upon whom service of legal process is deemed binding upon the savings bank.
- (27) Savings bank. A State savings bank or a federal savings bank, unless limited by use of the words 'State' or 'federal'.

(28) Savings institution. Either an association or a savings bank.

(29) Service corporation. A corporation operating under Article 7 of this Chapter that engages in activities determined by the rules of the Administrator to be incidental to the conduct of a depository institution business as provided in this Chapter, or engages in activities that further or facilitate the corporate purposes of a savings bank, or furnishes services to a savings bank or subsidiaries of a savings bank, the voting stock of which is owned directly or indirectly by one or more savings institutions.

(30) State savings bank. A depository institution organized and operated under this Chapter; or a corporation organized under federal law and so converted as to be operated under this Chapter.

(31) Stock savings bank. A savings bank owned by holders of capital stock and organized under this Chapter.

(32) Voluntary dissolution. The dissolution and liquidation of a savings bank initiated by its ownership.

" § 54C-5: Reserved for future codification purposes.

"ARTICLE 2.

"Incorporation and Organization.

" § 54C-6. Hearings.

Any hearing required to be held by this Chapter shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

" § 54C-7. Application of Chapter on business corporations.

All law relating to private corporations, and particularly the North Carolina Business Corporation Act, Chapter 55 of the General Statutes, that is not inconsistent with this Chapter or with the proper business of depository institutions is applicable to all State savings banks.

" § 54C-8. Scope and prohibitions; existing charters; injunctions.

(a) Nothing in this Chapter shall be construed to invalidate any charter that was valid before the enactment of this Chapter. Any savings banks so chartered on the effective date of this Chapter may continue operation in accordance with the Chapter under which it was chartered. However, after the date this Chapter becomes effective, no depository institution may be qualified as a savings bank except in accordance with this Chapter. Any savings bank chartered under this Chapter shall use the letters 'SSB' in its legal name.

(b) Except as provided in subsection (a) of this section, no person, corporation, company, or savings bank, except one incorporated and licensed in accordance with this Chapter or federal law to operate a savings bank, shall operate as a savings bank. Unless so authorized

as a State or federal savings bank and engaged in transacting a depository institution business, no person, corporation, company, or savings bank domiciled and doing business in this State shall:

- (1) Use in its name the term 'savings bank' or words of similar import or connotation that lead the public reasonably to believe that the business so conducted is that of a savings bank; or
- (2) Use any sign, or circulate or use any letterhead, billhead, circular, or paper whatsoever, or advertise or communicate in any manner that would lead the public reasonably to believe that it is conducting the business of a savings bank.

(c) Upon application by the Administrator or by any savings bank, a court of competent jurisdiction may issue an injunction to restrain any person or entity from violating or from continuing to violate subsection (b) of this section.

" § 54C-9. *Application to organize a savings bank.*

(a) The original incorporators, a majority of whom shall be domiciled in this State, may organize and establish a savings bank in order to promote the purposes of this Chapter, subject to approval as provided in this Chapter. The original incorporators shall file with the Administrator a preliminary application to organize a State savings bank in the form to be prescribed by the Administrator, together with the proper nonrefundable application fee.

(b) The Administrator shall receive the application to organize a State savings bank not less than 60 days before the scheduled consideration of the application by the Commission. The application shall contain the following:

- (1) The original of the certificate of incorporation, which shall be signed by the original incorporators, or a majority of them, and shall be properly acknowledged by a person duly authorized by this State to take proof or acknowledgment of deeds; and two conformed copies;
- (2) The names and addresses of the incorporators; and the names and addresses of the initial members of the board of directors;
- (3) Statements of the anticipated receipts, expenditures, earnings, and financial condition of the savings bank for its first three years of operation, or any longer period as the Administrator may require;
- (4) A showing satisfactory to the Commission that:
 - a. The public convenience and advantage will be served by the establishment of the proposed savings bank;

- b. There is a reasonable demand and necessity in the community that will be served by the establishment of the proposed savings bank;
- c. The proposed savings bank will have a reasonable probability of sustaining profitable and beneficial operations within a reasonable time in the community in which the proposed savings bank intends to locate;
- d. The proposed savings bank, if established, will promote healthy and effective competition in the community in the delivery to the public of savings institution services;

(5) The proposed bylaws; and

(6) Statements, exhibits, maps, and other data that may be prescribed or requested by the Administrator, which data shall be sufficiently detailed and comprehensive so as to enable the Administrator to pass upon the criteria set forth in this Article.

(c) The application shall be signed by the original incorporators, or a majority of them, and shall be properly acknowledged by a person duly authorized by this State to take proof and acknowledgment of deeds.

" § 54C-10. Certificate of incorporation.

(a) The certificate of incorporation of a proposed mutual savings bank shall set forth the following:

- (1) The name of the savings bank, which shall not so closely resemble the name of an existing depository institution doing business under the laws of this State as to be likely to mislead the public.
- (2) The county and city or town where its principal office is to be located in this State; and the name of its registered agent and the address of its registered office, including county and city or town, and street and number.
- (3) The period of duration, which may be perpetual. When the certificate of incorporation fails to state the period of duration, it is considered perpetual.
- (4) The purposes for which the savings bank is organized that are limited to purposes permitted under the laws of this State for savings banks.
- (5) The amount of the entrance fee per deposit account based upon the amount pledged.
- (6) The minimum amount on deposit in deposit accounts before it shall commence business.
- (7) Any provision not inconsistent with this Chapter and the proper operation of a savings bank, which the incorporators

shall set forth in the certificate of incorporation for the regulation of the internal affairs of the savings bank.

- (8) The number of directors, which shall not be less than seven, constituting the initial board of directors, which may be classified in the certificate of incorporation, and the name and address of each person who is to serve as a director until the first meeting of members, or until a successor is elected and qualified.

- (9) The names and addresses of the incorporators.

(b) The certificate of incorporation of a proposed stock savings bank shall set forth the following:

- (1) The name of the savings bank, which shall not so closely resemble the name of an existing depository institution doing business under the laws of this State as to be likely to mislead the public.
- (2) The county and city or town where its principal office is to be located in this State; and the name of its registered agent and the address of its registered office, including county and city or town, and street and number.
- (3) The period of duration, which may be perpetual. When the certificate of incorporation fails to state the period of duration, it is considered perpetual.
- (4) The purposes for which the savings bank is organized, which shall be limited to purposes permitted under the laws of this State for savings banks.
- (5) With respect to the shares of stock which the savings bank shall have authority to issue:
- a. If the stock is to have a par value, the number of the shares of stock and the par value of each.
- b. If the stock is to be without par value, the number of the shares of stock.
- c. If the stock is to be of both kinds mentioned in sub-subdivisions a. and b. of this subdivision, particulars in accordance with those sub-subdivisions.
- d. If the stock is to be divided into classes, or into series within a class of preferred or special shares of stock, the certificate of incorporation shall also set forth a designation of each class, with a designation of each series within a class, and a statement of the preferences, limitations, and relative rights of the stock of each class or series.
- (6) The minimum amount of consideration to be received for its shares of stock before it shall commence business.

- (7) A statement as to whether stockholders have preemptive rights to acquire additional or treasury shares of the savings bank.
- (8) Any provision not inconsistent with this Chapter or the proper operation of a savings bank, which the incorporators shall set forth in the certificate of incorporation for the regulation of the internal affairs of the savings bank.
- (9) The number of directors, which shall not be less than seven, constituting the initial board of directors, which may be classified in accordance with the certificate of incorporation, and the name and address of each person who is to serve as a director until the first meeting of the stockholders, or until a successor is elected and qualified.
- (10) The names and addresses of the incorporators.

" § 54C-11. Administrator to consider application.

Upon receipt of an application to organize and establish a savings bank, the Administrator shall examine or cause to be examined all the relevant facts connected with the formation of the proposed savings bank. If it appears to the Administrator that the proposed savings bank has complied with all the requirements set forth in this Chapter and the rules for the formation of a savings bank and is otherwise lawfully entitled to be organized and established as a savings bank, the Administrator shall present the application to the Commission for its consideration.

" § 54C-12. Criteria to be met before the Administrator may recommend approval of an application.

(a) The Administrator may recommend approval of an application to form a mutual savings bank only when all of the following criteria are met:

- (1) The proposed savings bank has an operational expense fund, from which to pay organizational and incorporation expenses, in an amount determined by the Administrator to be sufficient for the safe and proper operation of the savings bank, but in no event less than seventy-five thousand dollars (\$75,000). The moneys remaining in the expense fund shall be held by the savings bank for at least one year from its date of licensing. No portion of the fund shall be released to an incorporator or director who contributed to it, nor to any other contributor, nor to any other person, and no dividends shall be accrued or paid on the funds without the prior approval of the Administrator.
- (2) The proposed savings bank has pledges for deposit accounts in an amount determined by the Administrator to be sufficient for the safe and proper operation of the savings

bank, but in no event less than four million dollars (\$4,000,000).

- (3) All entrance fees for deposit accounts of the proposed savings bank have been made with legal tender of the United States.
- (4) The name of the proposed savings bank will not mislead the public and is not the same as an existing depository institution or so similar to the name of an existing depository institution as to mislead the public.
- (5) The character, general fitness, and responsibility of the incorporators and the initial board of directors of the proposed savings bank, a majority of whom shall be residents of North Carolina, will command the confidence of the community in which the proposed savings bank intends to locate.
- (6) There is a reasonable demand and necessity in the community that will be served by the establishment of the proposed savings bank.
- (7) The public convenience and advantage will be served by the establishment of the proposed savings bank.
- (8) The proposed savings bank will have a reasonable probability of sustaining profitable and beneficial operations in the community.
- (9) The proposed savings bank, if established, will promote healthy and effective competition in the community in the delivery to the public of savings institution services.

(b) The Administrator may recommend approval of an application to form a stock savings bank only when all of the following criteria are met:

- (1) The proposed savings bank has prepared a plan to solicit subscriptions for capital stock in an amount determined by the Administrator to be sufficient for the safe and proper operation of the savings bank, but in no event less than three million dollars (\$3,000,000).
- (2) The name of the proposed savings bank will not mislead the public and is not the same as an existing depository institution or so similar to the name of an existing depository institution as to mislead the public; and contains the wording 'corporation,' 'incorporated,' 'limited,' 'company,' or an abbreviation of one of these words or other words sufficient to distinguish stock savings banks from mutual savings banks.
- (3) The character, general fitness, and responsibility of the incorporators, initial board of directors, and initial

stockholders of the proposed savings bank will command the confidence of the community in which the proposed savings bank intends to locate.

- (4) All subscriptions for capital stock of the proposed savings bank have been purchased with legal tender of the United States.
- (5) There is a reasonable demand and necessity in the community that will be served by the establishment of the proposed savings bank.
- (6) The public convenience and advantage will be served by the establishment of the proposed savings bank.
- (7) The proposed savings bank will have a reasonable probability of sustaining profitable and beneficial operations in the community.
- (8) The proposed savings bank, if established, will promote healthy and effective competition in the community in the delivery to the public of savings institution services.

(c) The minimum amount of pledges for deposit accounts or subscriptions for capital stock may be adjusted if the Administrator determines that a greater requirement is necessary or that a smaller requirement will provide a sufficient capital base. The Administrator's findings and recommendations to the Commission shall be based upon due consideration of (i) the population of the proposed trade area, (ii) the total deposits of the depository institutions operating in the proposed trade area, (iii) the economic conditions of and projections for the proposed trade area, (iv) the business experience and reputation of the proposed management, (v) the business experience and reputation of the proposed incorporators and directors, and (vi) the projected deposit growth, capitalization, and profitability of the proposed savings bank.

"§ 54C-13. Commission to review findings and recommendations of Administrator.

(a) If the Administrator does not have the completed application within 120 days of the filing of the preliminary application, the application shall be returned to the applicants.

(b) When the Administrator has completed the examination and investigation of the facts relevant to the establishment of the proposed savings bank, the Administrator shall present the findings and recommendations to the Commission at a public hearing. The Commission shall approve or reject an application within 180 days of the submission of the preliminary application.

(c) Not less than 45 days before the public hearing held for the consideration of the application to establish a savings bank, the incorporators shall cause to be published a notice in a newspaper of

general circulation in the area to be served by the proposed savings bank. The notice shall contain:

- (1) A statement that the application has been filed with the Administrator;
- (2) The name of the community where the principal office of the proposed savings bank intends to locate;
- (3) A statement that a public hearing shall be held to consider the application; and
- (4) A statement that any interested or affected party may file a written statement either favoring or protesting the creation of the proposed savings bank. The statement shall be filed with the Administrator within 30 days of the date of publication.

(d) The Commission, at the public hearing, shall consider the findings and recommendations of the Administrator and shall hear oral testimony that the Administrator may wish to give or be called upon to give, and shall also receive information and hear testimony from the original incorporators of the proposed savings bank and from any and all other interested or affected parties. The Commission shall hear only testimony and receive only information that is relevant to the consideration of the application and the operation of the proposed savings bank.

" § 54C-14. Grounds for approval or denial of application.

(a) After consideration of the findings, recommendations, and any oral testimony of the Administrator, and the consideration of any other information and evidence, either written or oral, as has come before it at the public hearing, the Commission shall approve or disapprove the application within 30 days after the public hearing. The Commission shall approve the application if it finds that the certificate of incorporation is in compliance with G.S. 54C-10 and that there is compliance with all the criteria set out in G.S. 54C-12, the remainder of this Chapter, rules, and the General Statutes.

(b) If the Commission approves the application, the Administrator shall notify the Secretary of State with a certificate of approval, accompanied by the original of the certificate of incorporation and the two conformed copies.

(c) Upon receipt of the certificate of approval, the original of the certificate of incorporation, and the two conformed copies and upon the payment by the newly chartered savings bank of the appropriate organization tax and fees, the Secretary of State shall file the certificate of incorporation in accordance with G.S. 55-1-20. The Secretary of State shall certify, under official seal, the two conformed copies of the certificate of incorporation, one of which shall be forwarded immediately to the original incorporators or their representatives, the

other of which shall be forwarded to the office of the Administrator for filing. Upon the recordation of the certificate of incorporation by the Secretary of State, the savings bank is a body politic and corporate under the name stated in the certificate, and may begin the savings bank business when duly licensed by the Administrator.

(d) The certificate of incorporation, or a copy, duly certified by the Secretary of State, by the register of deeds of the county where the savings bank is located, or by the Administrator, under their respective seals, is evidence in all courts and places, and is, in all judicial proceedings, deemed *prima facie* evidence of the complete organization and incorporation of the savings bank purporting thereby to have been established.

(e) After approval of the application, the Administrator shall supervise and monitor the organization process. The Administrator shall ensure that sufficient pledges for deposit accounts or subscriptions for capital stock as well as insurance of deposit accounts have been secured by the organizers.

" § 54C-15. Final decision.

The Commission shall present the Administrator with a final decision that is in accordance with Chapter 150B of the General Statutes.

" § 54C-16. Appeal.

The final decision of the Commission may be appealed in accordance with Chapter 150B of the General Statutes.

" § 54C-17. Insurance of accounts required.

A State savings bank shall obtain and maintain insurance on all members' and customers' deposit accounts from an insurance corporation created by an act of Congress. Before the licensing of a savings bank, a certificate of incorporation duly recorded under G.S. 54C-14(c), is deemed to be sufficient certification to the insuring corporation that the savings bank is a legal corporate entity. The insurance shall be obtained within the time limit prescribed in G.S. 54C-19. Subject to the rules of the Administrator, a State savings bank may obtain or participate in efforts to obtain insurance of deposits that is in excess of the amount eligible for federal insurance of accounts. This insurance is known as 'excess insurance'.

" § 54C-18. Status as IRS qualified thrift institution.

A State savings bank shall maintain sixty percent (60%) of its assets in investments that qualify under 26 U.S.C. § 7701(a)(19), except that no more than ten percent (10%) of the sixty percent (60%) shall be comprised of investments described in 26 U.S.C. § 7701(a)(19)(C)(i) and 26 U.S.C. § 7701(a)(19)(C)(ii).

" § 54C-19. Time allowed to commence business.

A newly chartered savings bank shall commence business within one year after the date upon which its corporate existence began. A savings bank that does not commence business within this time, shall forfeit its corporate existence, unless the Administrator, before the expiration of the one year period, approves an extension of the time within which the association may commence business, upon a written request stating the reasons for the request. Upon forfeiture, the certificate of incorporation shall expire, and any and all action taken in connection with the incorporation and chartering of the savings bank, with the exception of fees paid to the Division, shall become null and void. The Administrator shall determine if a savings bank has failed to commence business within one year, without extension as provided in this section, and shall notify the Secretary of State and the register of deeds in the county in which the savings bank is located that the certificate of incorporation has expired.

" § 54C-20. Licensing.

A newly chartered savings bank is entitled to a license to operate upon payment to the Division of the appropriate license fee as prescribed by the Administrator, when it shows to the satisfaction of the Administrator evidence of capable, efficient, and equitable management, that the organization of the savings bank has been conducted lawfully and is complete, and when it passes a final inspection by the Administrator or the Administrator's representative preceding the opening of its doors for business.

" § 54C-21. Amendments to certificate of incorporation.

(a) An amendment to the certificate of incorporation of a State savings bank shall be made at any annual or special meeting of the savings bank, held in accordance with G.S. 54C-106 and G.S. 54C-107, by a majority of votes or shares cast by members or stockholders present in person or by proxy at the meeting. Any amendment shall be certified by the appropriate corporate official, submitted to the Administrator for approval or rejection, and if approved, then certified by the Administrator and recorded as provided in G.S. 54C-14 for certificates of incorporation.

(b) Notwithstanding subsection (a) of this section, a State savings bank may change its registered office or its registered agent, or both, in accordance with G.S. 55-5-02. The savings bank shall file a copy of the statement or certificate certified by the Secretary of State in the office of the Administrator.

" § 54C-22. List of stockholders to be maintained.

A stock savings bank organized and operated under this Chapter shall, at all times, keep a current list of the names of all its stockholders. Whenever called upon by the Administrator, a stock savings bank shall file in the office of the Administrator a correct list

of all its stockholders, the resident address of each, the number of shares of stock held by each, and the dates of issue.

" § 54C-23. Branch offices.

(a) A State savings bank may apply to the Administrator for permission to establish a branch office. The application shall be in the form prescribed by the Administrator and shall be accompanied by the proper branch application fee. The Administrator shall approve or deny branch applications within 120 days of filing.

(b) The Administrator shall approve a branch application when all of the following criteria are met:

- (1) The applicant has gross assets of at least ten million dollars (\$10,000,000).
- (2) The applicant has evidenced financial responsibility.
- (3) The applicant has a net worth equal to or exceeding the amount required by the insurer of deposit accounts.
- (4) The applicant has an acceptable internal control system that includes certain basic internal control requirements essential to the protection of assets and the promotion of operational efficiency regardless of the size of the applicant.

(c) Upon receipt of a branch application, the Administrator shall examine or cause to be examined all the relevant facts connected with the establishment of the proposed branch office. If it appears to the satisfaction of the Administrator that the applicant has complied with all the requirements set forth in this section and the regulations for the establishment of a branch office and that the savings bank is otherwise lawfully entitled to establish the branch office, then the Administrator shall approve the branch application.

(d) Not more than 10 days following the filing of the branch application with the Administrator, the applicant shall cause a notice to be published in a newspaper of general circulation in the area to be served by the proposed branch office. The notice shall contain:

- (1) A statement that the branch application has been filed with the Administrator;
- (2) The proposed address of the branch office, including city or town and street; and
- (3) A statement that any interested or affected party may file a written statement with the Administrator, within 30 days of the date of the publication of the notice, protesting the establishment of the proposed branch office and requesting a hearing before the Administrator on the application.

(e) Any interested or affected party may file a written statement with the Administrator within 30 days of the date of initial publication of the branch application notice, protesting the establishment of the proposed branch office and requesting a hearing before the

Administrator on the application. If a hearing is held on the branch application, the Administrator shall receive information and hear testimony only from the applicant and from any interested or affected party that is relevant to the branch application and the operation of the proposed branch office. The Administrator shall issue the final decision on the branch application within 30 days following the hearing. The final decision shall be in accordance with Chapter 150B of the General Statutes.

(f) If a hearing is not held on the branch application, the Administrator shall issue the final decision within 120 days of the filing of the application. The final decision shall be in accordance with Chapter 150B of the General Statutes.

(g) A party to a branch application may appeal the final decision of the Administrator to the Commission at any time after the final decision, but not later than 30 days after a written copy of the final decision is served upon the party and the party's attorney of record by personal service or by certified mail. Failure to file an appeal within the time stated shall operate as a waiver of the right of the party to review by the Commission and by a court of competent jurisdiction in accordance with Chapter 150B of the General Statutes, relating to judicial review.

" § 54C-24. Request to change location of a branch or principal office.

The board of directors of a State savings bank may change the location of a branch office or the principal office of the savings bank with the prior written approval of the Administrator. The Administrator may request, and the savings bank shall provide, any information that the Administrator determines is necessary to evaluate the request.

" § 54C-25. Approval revoked; branch office.

The Commission may, for good cause and after a hearing, order the closing of a branch office. The order shall be made in writing to the savings bank and shall fix a reasonable time after which the savings bank shall close the branch office.

" § 54C-26. Branch offices closed.

The Board of a State savings bank may discontinue the operation of a branch office upon giving at least 30 days prior written notice to the Administrator, the notice to include the date upon which the branch office shall be closed.

" § 54C-27. Loan production office.

A State savings bank may open or close a loan production office with the prior written approval of the Administrator. The Administrator may request, and the savings bank shall provide, any information that the Administrator determines is necessary to evaluate the request.

" §§ 54C-28 to 54C-29: Reserved for future codification purposes.

"ARTICLE 3.

"Corporate Changes.

" § 54C-30. Conversion to savings bank.

(a) An association or State or national bank, upon a majority vote of its board of directors, may apply to the Administrator for permission to convert to a State savings bank and for certification of appropriate amendments to its certificate of incorporation to effect the change. Upon receipt of an application to convert to a State savings bank, the Administrator shall examine all facts connected with the conversion. The depository institution applying for permission to convert shall pay all the expenses and cost of the examination.

(b) The converting depository institution shall submit a plan of conversion as a part of the application to the Administrator. The Administrator may approve it with or without amendment. If the Administrator approves the plan, then the plan shall be submitted to the members or stockholders as provided in subsection (c) of this section. If the Administrator refuses to approve the plan, the objections shall be stated in writing and the converting depository institution shall be given an opportunity to amend the plan to obviate the objections or to appeal the Administrator's decision to the Commission.

(c) After lawful notice to the members or stockholders of the converting depository institution and full and fair disclosure, the substance of the plan shall be approved by a majority of the total votes that members or stockholders of the institution are eligible and entitled to cast. The vote by the members or stockholders may be in person or by proxy. Following the vote of the members or stockholders, the results of the vote certified by an appropriate officer of the converting depository institution shall be filed with the Administrator. The Administrator shall then either approve or disapprove the requested conversion to a State savings bank. After approval of the conversion, the Administrator shall supervise and monitor the conversion process and shall ensure that the conversion is conducted lawfully and under the approved plan of conversion.

" § 54C-31. Conversion from State to federal charter.

A State savings bank, stock or mutual, organized and operated under this Chapter, may convert to a federal charter in accordance with the laws and regulations of the United States and with the same force and effect as though originally incorporated under these laws. The procedure to effect this conversion is as follows:

- (1) The savings bank shall submit a plan of conversion to the Administrator, who may approve the plan, with or without amendment, or refuse to approve the plan. If the

- Administrator approves the plan, then the plan shall be submitted to the members or stockholders as provided in the subdivision (2) of this section. If the Administrator refuses to approve the plan, the objections shall be stated in writing and the converting savings bank shall be given an opportunity to amend the plan to obviate the objections or to appeal the Administrator's decision to the Commission.
- (2) A meeting of the members or stockholders shall be held upon not less than 15 days' notice to each member or stockholder. Notice of the meeting may be mailed to each member or stockholder, postage prepaid, to the last known address, or the board of directors may cause notice of the meeting to be published, once a week for two weeks preceding the meeting, in a newspaper of general circulation in the county where the savings bank has its principal office. It is regarded as sufficient notice of the purpose of the meeting if the notice contains substantially the following statement: 'The purpose of this meeting is to consider the conversion of this State chartered savings bank to a federal charter, under the laws of the United States.' An appropriate officer of the savings bank shall make proof by affidavit at the meeting of due service of the notice or call for the meeting.
- (3) At the meeting of the members or stockholders of the savings bank, the members or stockholders may, by affirmative vote of a majority of votes or shares present, in person or by proxy, resolve to convert the savings bank to a federal charter. A copy of the minutes of the meeting of the members or stockholders certified by an appropriate officer of the savings bank shall be filed in the office of the Administrator. The certified copy when so filed is *prima facie* evidence of the holding and the action of the meeting.
- (4) Within a reasonable time after the receipt of a certified copy of the minutes, the Administrator shall either approve or disapprove the proceedings of the meeting for compliance with the procedure set forth in this section. If the Administrator approves the proceedings, the Administrator shall issue a certificate of approval of the conversion. The savings bank shall record the certificate in the office of the Secretary of State. If the Administrator disapproves the proceedings, the Administrator shall provide a written explanation of the disapproval and notify the savings bank of the disapproval. The savings bank may appeal a disapproval to the Commission.

- (5) The savings bank shall file an application, in the manner prescribed or authorized by the laws and regulations of the United States, to consummate the conversion to a federal charter. A copy of the charter or authorization issued to the savings bank by the appropriate federal regulatory authority shall be filed with the Administrator. Upon filing with the Administrator, the savings bank shall cease to be a State savings bank and shall be a federal depository institution.
- (6) Whenever any savings bank converts to a federal charter it shall cease to be a savings bank under the laws of this State, except that its corporate existence is deemed to be extended for the purpose of prosecuting or defending suits by or against it and of enabling it to close its business affairs as a State savings bank and to dispose of and convey its property. At the time when the conversion becomes effective all the property of the State savings bank including all its rights, title, and interest in and to all property of whatever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the federal depository institution, which shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the savings bank; and the federal depository institution as of the effective time of the conversion shall succeed to all the rights, obligations, and relations of the State savings bank.

" § 54C-32. Simultaneous charter and ownership conversion.

(a) In the event of a State charter to federal charter conversion, when the form of ownership will also simultaneously be changed from stock to mutual, or from mutual to stock, the conversion shall proceed initially as if it involves only a charter conversion, under G.S. 54C-31. After the savings bank becomes a federal depository institution, then the federal regulatory authority shall govern the continuing conversion of the form of ownership of the newly converted depository institution.

(b) In the event of a federal charter to State charter conversion, when the form of ownership will also simultaneously be changed from stock to mutual or from mutual to stock, the conversion shall proceed initially as if it involves only a charter conversion under G.S. 54C-30.

After the federal depository institution becomes a State savings bank, G.S. 54C-33 or G.S. 54C-34 shall govern the continuing conversion of the form of ownership of the newly converted savings bank.

(c) This section shall not apply to any simultaneous charter and ownership conversion accomplished in conjunction with a merger under G.S. 54C-39.

"§ 54C-33. Conversion of mutual to stock savings bank.

(a) A mutual savings bank may convert from mutual to the stock form of ownership as provided in this section.

(b) A mutual savings bank may apply to the Administrator for permission to convert to a stock savings bank and for certification of appropriate amendments to the savings bank's certificate of incorporation. Upon receipt of an application to convert from mutual to stock form the Administrator shall examine all facts connected with the requested conversion. The savings bank applying for permission to convert shall pay all expenses and cost of the examination, monitoring, and supervision.

(c) The savings bank shall submit a plan of conversion as a part of the application to the Administrator. The Administrator may approve it with or without amendment, if it appears that:

- (1) After conversion the savings bank will be in sound financial condition and will be soundly managed;
- (2) The conversion will not impair the capital of the savings bank nor adversely affect the savings bank's operations;
- (3) The conversion will be fair and equitable to the members of the savings bank and no person whether member, employee, or otherwise, will receive any inequitable gain or advantage by reason of the conversion;
- (4) The savings bank services provided to the public by the savings bank will not be adversely affected by the conversion;
- (5) The substance of the plan has been approved by a vote of two-thirds of the board of directors of the savings bank;
- (6) All shares of stock issued in connection with the conversion are offered first to the members of the savings bank;
- (7) All stock shall be offered to members of the savings bank and others in prescribed amounts and otherwise under a formula and procedure that is fair and equitable and will be fairly disclosed to all interested persons; and
- (8) The plan provides a statement as to whether stockholders shall have preemptive rights to acquire additional or treasury shares of the savings bank.

If the Administrator approves the plan, then the plan shall be submitted to the members as provided in subsection (d) of this section.

If the Administrator refuses to approve the plan, the Administrator shall state the objections in writing and give the converting savings bank an opportunity to amend the plan to obviate the objections or to appeal the Administrator's decision to the Commission.

(d) After lawful notice to the members of the savings bank and full and fair disclosure, the substance of the plan shall be approved by a majority of the total votes that members of the savings bank are eligible and entitled to cast. The vote by the members may be in person or by proxy. Following the vote of the members, the results of the vote certified by an appropriate officer of the savings bank shall be filed with the Administrator. The Administrator shall then either approve or disapprove the requested conversion. After approval of the conversion, the Administrator shall supervise and monitor the conversion process and shall ensure that the conversion is conducted lawfully and under the savings bank's approved plan of conversion.

(e) Any rules that the Administrator may adopt to govern conversions shall equal or exceed the requirements for conversion, if any, imposed by the federal insurer of deposit accounts.

" § 54C-34. Conversion of stock savings bank to mutual savings bank.

A stock savings bank organized and operating under this Chapter may, subject to the approval of the Administrator, convert to a mutual savings bank under this section. Any rules that the Administrator may adopt governing the conversion of stock savings banks to mutual savings banks shall include requirements that:

- (1) The conversion neither impair the capital of the converting savings bank nor adversely affect its operations;
- (2) The conversion shall be fair and equitable to all stockholders of the converting savings bank;
- (3) The public shall not be adversely affected by the conversion;
- (4) Conversion of a savings bank shall be accomplished only under a plan approved by the Administrator. The plan shall have been approved by an affirmative vote of two-thirds of the members of the board of directors of the converting savings bank, after a full and fair disclosure to the stockholders, by an affirmative vote of a majority of the total votes that stockholders of the savings bank are eligible and entitled to cast; and
- (5) The plan of conversion provides that:
 - a. Deposit accounts be issued in connection with the conversion to the stockholders of the converting savings bank;
 - b. A uniform date be fixed for the determination of the stockholders to whom, and the amount to each

stockholder of which, deposit accounts shall be made available; and

- c. Deposit accounts so made available to stockholders be based upon a fair and equitable formula approved by the Administrator and fully and fairly disclosed to the stockholders of the converting savings bank.

" § 54C-35. Merger of like savings banks.

Any two or more mutual savings banks or any two or more stock savings banks organized and operating, may merge or consolidate into a single savings bank. The procedure to effect the merger is as follows:

- (1) The directors, or a majority of them, of the savings banks that desire to merge may, at separate meetings, enter into a written agreement of merger signed by them and under the corporate seals of the respective savings banks specifying each savings bank to be merged and the savings bank that is to receive into itself the merging savings bank or banks, and prescribing the terms and conditions of the merger and the mode of carrying it into effect. The merger agreement may provide other provisions with respect to the merger as appear necessary or desirable, or as the Administrator may require.

- (2) The merger agreement together with copies of the minutes of the meetings of the respective boards of directors verified by the secretaries of the respective savings banks shall be submitted to the Administrator, who shall cause a careful investigation and examination to be made of the affairs of the savings banks proposing to merge, including a determination of their respective assets and liabilities. Each savings bank that is investigated and examined shall pay the cost and expense for the examination. If, as a result of the investigation, the Administrator concludes that the members or stockholders of each of the savings banks proposing to merge will be benefited by the merger, the Administrator shall, in writing, approve the merger. If the Administrator deems that the proposed merger will not be in the interest of all members or stockholders of the savings banks so merging, the Administrator shall, in writing, disapprove the merger. If the Administrator approves the merger agreement, then it shall be submitted, within 45 days after notice to the savings banks of the approval, to the members or stockholders of each savings bank, as provided in subdivision (3) of this section. The savings bank may appeal the disapproval of the merger to the Commission.

- (3) A meeting of the members or stockholders of each of the savings banks shall be held separately upon written notice of not less than 15 days to members or stockholders of each savings bank. The notice shall specify the time, place, and purpose for the calling of the meeting. Notice shall be made by personal service or postage prepaid mail to the last address of each member or stockholder appearing upon the records of the savings bank and by publication of notice at least once a week for two weeks preceding the meeting in one or more newspapers of general circulation in the county or counties where each savings bank has its principal or a branch office, or in a newspaper of general circulation in an adjoining county if none is available in the county. An appropriate officer of the savings bank shall make proof by affidavit at the meeting of the due service of the notice or call for the meeting.
- (4) At separate meetings of the members or stockholders of the respective savings banks, the members or stockholders may adopt, by an affirmative vote of a majority of the votes or shares present, in person or by proxy, a resolution to merge into a single savings bank upon the terms of the merger agreement as shall have been agreed upon by the directors of the respective savings banks and as approved by the Administrator. Upon the adoption of the resolution, a copy of the minutes of the proceedings of the meetings of the members or stockholders of the respective savings banks, certified by an appropriate officer of the merging savings banks, shall be filed in the office of the Administrator. Within 15 days after the receipt of a certified copy of the minutes of the meetings, the Administrator shall either approve or disapprove the proceedings for compliance with this section. If the Administrator approves the proceedings, the Administrator shall issue a certificate of approval of the merger. The certificate shall be filed and recorded in the office of the Secretary of State. When the certificate is so filed, the merger agreement shall take effect according to its terms and is binding upon all the members or stockholders of the savings banks merging, and it is deemed to be the act of merger of the constituent savings banks under the laws of this State, and the certificate or certified copy thereof is evidence of the agreement and act of merger of the savings banks and the observance and performance of all acts and

conditions necessary to have been observed and performed precedent to the merger. Within 60 days after its receipt from the Secretary of State, the certified copy of the certificate shall be filed with the register of deeds of the county or counties in which the respective savings banks so merged have recorded their original certificates of incorporation. Failure to so file shall subject the savings bank to only a penalty of one hundred dollars (\$100.00) to be collected by the Secretary of State. If the Administrator disapproves the proceedings, the Administrator shall issue a written statement of the reasons for the disapproval and notify the savings banks to that effect. The savings banks may appeal the disapproval to the Commission.

- (5) Upon the merger of any savings bank, as above provided, into another:
- a. Its corporate existence is merged into that of the receiving savings bank; and all its right, title, interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of any conceivable value or benefit then existing belonging or pertaining to it, or which would inure to it under an unmerged existence, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the receiving savings bank, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held, or enjoyed by the savings banks so merged; and the receiving savings bank shall absorb fully and completely the savings bank or banks so merged.
 - b. Its rights, liabilities, obligations, and relations to any person shall remain unchanged and the savings bank into which it has been merged shall, by the merger, succeed to all the relations, obligations, and liabilities as though it had itself assumed or incurred the same. No obligation or liability of a member, customer, or stockholder in a savings bank that is a party to the merger shall be affected by the merger, but obligations and liabilities shall continue as they existed before the merger, unless otherwise provided in the merger agreement.
 - c. A pending action or other judicial proceeding to which a savings bank that is so merged is a party, is not

deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order, or decree in the same manner as if the merger had not been made; or the receiving savings bank may be substituted as a party to the action or proceeding, and any judgment, order, or decree may be rendered for or against it that might have been rendered for or against the other savings bank if the merger had not occurred.

- (6) Notwithstanding any other provision of this section, the Administrator may waive any or all of the foregoing requirements upon finding that waiver would be in the best interest of the members or stockholders of the merging savings banks.

" § 54C-36. Merger of savings banks where ownership is converted.

(a) Any two or more State mutual savings banks may merge to form a single State stock savings bank in separate merger-conversion proceedings or in simultaneous merger-conversion proceedings.

(b) Any two or more State stock savings banks may merge to form a single State mutual savings bank in separate merger-conversion proceedings or in simultaneous merger-conversion proceedings.

" § 54C-37. Merger of mutual and stock savings banks.

Any two or more savings banks, when one or more is mutually owned and one or more is stock owned, may merge to form either a mutual or stock savings bank in separate conversion-merger proceedings or in simultaneous conversion-merger proceedings.

" § 54C-38. Simultaneous merger and conversion.

Any combination of associations and State savings banks may merge to form either an association or a State savings bank.

" § 54C-39. Merger of federal charters with State savings banks.

Any two or more depository institutions, when one or more is a State savings bank and one or more is a federal depository institution operating in North Carolina, may merge under either a State savings bank charter or a federal charter.

" § 54C-40. Merger of savings banks with banks and associations.

(a) A State savings bank, upon a majority vote of its board of directors, may apply to the Administrator for permission to merge with any bank, as defined in G.S. 53-1, or any association, as defined in G.S. 54B-4.

(b) The State savings bank shall submit a plan of merger as a part of the application to the Administrator. The Administrator may recommend approval of the plan of merger with or without amendment.

If the Administrator approves the plan, then the plan shall be submitted to the stockholders or members as provided in subsection (c) of this section. If the Administrator refuses to approve the plan, the Administrator shall state the objections in writing and give the merging savings bank an opportunity to amend the plan to obviate the objections or to appeal the Administrator's decision to the Commission.

(c) After lawful notice to the stockholders or members of the savings bank and full and fair disclosure, the substance of the plan shall be approved by a majority of the total votes that stockholders or members of the savings bank are eligible and entitled to cast. The vote by the stockholders or members may be in person or by proxy. Following the vote of the stockholders or members, the results of the vote certified by an appropriate officer of the savings bank shall be filed with the Administrator. The Administrator shall then either approve or disapprove the requested merger.

" § 54C-41. Voluntary dissolution by directors.

A State savings bank may be voluntarily dissolved by a majority vote of the board of directors when substantially all of the assets have been sold for the purpose of terminating the business of the savings bank or as provided in G.S. 55-14-01 and when a certificate of dissolution is recorded in the manner required by this Chapter for the recording of certificates of incorporation.

" § 54C-42. Voluntary dissolution by stockholders or members.

At any annual or special meeting called for the purpose of dissolution, a savings bank may, by an affirmative vote, in person or by proxy, of at least two-thirds of the total number of shares or votes that all members or stockholders of the association are entitled to cast, resolve to dissolve and liquidate the savings bank and adopt a plan of voluntary dissolution. Upon adoption of the resolution and plan of voluntary dissolution, the members or stockholders shall proceed to elect not more than three liquidators who shall post bond as required by the Administrator. The liquidators shall have full power to execute the plan; and the procedure thereafter shall be as follows:

- (1) A copy of the resolution, certified by an appropriate officer of the savings bank, together with the minutes of the meeting of members or stockholders, the plan of liquidation, and an itemized statement of the savings bank's assets and liabilities, sworn to by a majority of its board of directors, shall be filed with the Administrator. The minutes of the meeting of members or stockholders shall be certified by an appropriate officer of the association, and shall set forth the notice given, the time of mailing thereof, the vote on the resolution, the total number of shares or

votes that all members of the savings bank were entitled to cast thereon, and the names of the liquidators elected.

- (2) If the Administrator finds that the proceedings are in accordance with this Chapter, and that the plan of liquidation is not unfair to any person affected, the Administrator shall attach a certificate of approval to the plan and shall forward one copy to the liquidators and one copy to the savings bank's federal deposit account insurance corporation. Once the Administrator has approved the resolution and the plan of liquidation, it shall thereafter be unlawful for the savings bank to accept any additional deposit accounts or additions to deposit accounts or make any additional loans, but all its income and receipts in excess of actual expenses of liquidation of the savings bank shall be applied to the discharge of its liabilities.
- (3) The liquidating savings bank shall pay a reasonable compensation, subject to the approval of the Administrator, to the appointed liquidator.
- (4) The plan becomes effective upon the recording of the Administrator's certificate of approval in the manner required by this Chapter for the recording of the certificate of incorporation.
- (5) The liquidation of the savings bank is subject to the supervision and examination of the Administrator.

" § 54C-43. Reports of voluntary dissolution.

Upon completion of liquidation, the liquidator shall file with the Administrator a final report and accounting of the liquidation. The Administrator's approval of the report shall operate as a complete and final discharge of the liquidator, the board of directors, and each member or stockholder in connection with the liquidation of the savings bank. Upon approval of the report, the Administrator shall issue a certificate of dissolution of the savings bank and shall record same in the manner required by this Chapter for the recording of certificates of incorporation. The dissolution is effective upon the recording of the certificates of incorporation.

" § 54C-44. Stock dividends.

No dividend on stock shall be paid unless the savings bank has the prior written approval of the Administrator, except as provided in any rules that the Administrator may adopt.

" § 54C-45. Supervisory mergers, consolidations, conversions, and combination mergers and conversions.

Notwithstanding any other provision of this Chapter, in order to protect the public, including members, depositors, and stockholders of

a State savings bank, the Administrator, upon making a finding that a State savings bank is unable to operate in a safe and sound manner, may authorize or require a short form merger, consolidation, conversion, or combination merger and conversion of the State savings bank, or any other transaction, as to which the finding is made.

" § 54C-46. Interim savings banks.

(a) Article 2 of this Chapter shall not apply to applications for permission to organize an interim State savings bank so long as the application is approved by the Administrator.

(b) Preliminary approval of an application for permission to organize an interim State savings bank is conditional upon the Administrator's approval of an application to merge the interim savings bank and an existing stock savings bank or on the Administrator's approval of any other transaction.

" §§ 54C-47 to 54C-51: Reserved for future codification purposes.

"ARTICLE 4.

"Supervision.

" § 54C-52. Supervision.

(a) The Administrator shall perform the duties and exercise the powers as to savings banks organized or operated under this Chapter, except as otherwise provided herein.

(b) The Commission may review, approve, disapprove, or modify any action taken by the Administrator in the exercise of the powers, duties, and functions granted to the Administrator by this Chapter.

" § 54C-53. Power of Administrator to adopt rules and definitions: reproduction of records.

(a) The Administrator shall adopt rules, definitions, and forms as may be necessary for the supervision and regulation of savings banks and for the protection of the public investing in savings banks.

(b) Without limiting the generality of subsection (a) of this section, the Administrator may adopt rules, definitions, and forms with respect to the following:

- (1) Reserve requirements;
- (2) Stock ownership and dividends;
- (3) Stock transfers;
- (4) Original incorporators, stockholders, directors, officers, and employees of a savings bank;
- (5) Bylaws;
- (6) The operation of savings banks;
- (7) Deposit accounts, bonus plans, and contracts for savings programs;
- (8) Loans and loan expenses;
- (9) Investments and resource management;

- (10) Forms of proxies, holders of proxies, and proxy solicitations;
- (11) Types of financial records to be maintained by savings banks;
- (12) Retention periods of various financial records;
- (13) Internal control procedures of savings banks;
- (14) Conduct and management of savings banks;
- (15) Chartering and branching;
- (16) Liquidations, dissolutions, and receiverships;
- (17) Mergers, consolidations, conversions, and combination mergers and conversions;
- (18) Interim savings banks;
- (19) Reports that may be required by the Administrator;
- (20) Conflicts of interest;
- (21) Service corporations; and
- (22) Subsidiary savings banks and holding companies, including the rights of members, levels of investment in the subsidiaries, and stock sales.

(c) A savings bank may cause any or all of its records to be recorded, copied, or reproduced by any photographic, photostatic, or miniature photographic process that correctly, accurately, permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a film or other durable material.

(d) A photographic, photostatic, or miniature photographic copy or reproduction is deemed to be an original record in all courts and administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any photographic copy or reproduction is deemed to be a facsimile, exemplification, or certified copy of the original record for all purposes.

(e) This section, with reference to the retention and disposition of records, shall apply to any federal savings bank operating in North Carolina unless in conflict with regulations prescribed by its federal regulatory authority.

" § 54C-54. Examinations by Administrator; report.

(a) It is the Administrator's duty, if at any time the Administrator deems it prudent, to examine and investigate everything relating to the business of a State savings bank or a holding company thereof, and to appoint a suitable and competent person to make the investigation. The investigator shall file with the Administrator a full report of the findings in the case, including any violation of law or any unauthorized or unsafe practices of the savings bank disclosed by the examination.

(b) The Administrator shall furnish a copy of the report to the savings bank examined and may, upon request, furnish a copy of, or excerpts from, the report to the insurer of accounts.

(c) No savings bank may willfully delay or willfully obstruct an examination in any fashion. A person failing to comply with this subsection is guilty of a misdemeanor.

(d) No person who possesses or controls any books, accounts, or papers of any State savings bank shall refuse to exhibit same to the Administrator or the Administrator's agent on demand, or shall knowingly or willingly make any false statement in regard to the same. A person failing to comply with this subsection is guilty of a misdemeanor.

"§ 54C-55. Supervision and examination fees authorized; use of funds collected under Chapter.

(a) Every State savings bank, including savings banks in process of voluntary liquidation, or a holding company thereof, shall pay into the office of the Administrator each July a supervisory fee. Examination fees shall be paid promptly upon an association's receipt of the examination billing. The Administrator, subject to the advice and consent of the Commission, shall, on or before June 1 of each year:

- (1) Determine and fix the scale of supervisory and examination fees to be assessed and collected during the next fiscal year; and
- (2) Determine and fix the amount of the fee and set the fee collection schedule for the fees to be assessed to and collected from applicants to defray the cost of processing their charter, branch, merger, conversion, holding company acquisition, and name change applications.

(b) All funds and revenue collected by the Division under this section and all other sections of this Chapter that authorize the collection of fees and other funds shall be deposited with the State Treasurer and expended under the terms of the Executive Budget Act, solely to defray expenses incurred by the office of the Administrator in carrying out its supervisory and auditing functions. Civil penalties collected under this Chapter shall be credited to the General Fund and may be appropriated by the General Assembly for any public purpose.

(c) Notwithstanding subsections (a) and (b) of this section, whenever the Administrator under G.S. 54C-54 appoints a suitable and competent person, other than a person employed by the Administrator's office, to make an examination and investigation of the business of a State savings bank, the savings bank shall pay all costs and expenses relative to the examination and investigation.

"§ 54C-56. Prolonged audit, examination, or revaluation; payment of costs.

(a) If, in the opinion of the Administrator, an examination conducted under G.S. 54C-55 fails to disclose the complete financial condition of a savings bank, the Administrator may in order to ascertain its complete financial condition:

- (1) Make an extended audit or examination of the savings bank or cause an audit or examination to be made by an independent auditor; and
- (2) Make an extended revaluation of any of the assets or liabilities of the savings bank or cause an independent appraiser to make a revaluation.

(b) The Administrator shall collect from the savings bank a reasonable sum for actual or necessary expenses of an audit, examination, or revaluation.

"§ 54C-57. Administrator to have right of access to books and records of the savings bank; right to issue subpoenas, administer oaths, examine witnesses.

(a) The Administrator and the Administrator's agents:

- (1) Shall have free access to all books and records of a savings bank, or a service corporation or holding company thereof, that relate to its business, and the books and records kept by an officer, agent, or employee relating to or upon which any record is kept;
- (2) May subpoena witnesses and administer oaths or affirmations in the examination of any director, officer, agent, or employee of a savings bank, or a service corporation or holding company thereof or of any other person in relation to its affairs, transactions, and conditions;
- (3) May require the production of records, books, papers, contracts, and other documents; and
- (4) May order that improper entries be corrected on the books and records of a savings bank.

(b) The Administrator may issue subpoenas **duces tecum**.

(c) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, a court of competent jurisdiction, on the application of the Administrator, shall compel compliance by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court.

"§ 54C-58. Test appraisals of collateral for loans; expense paid.

(a) The Administrator may direct the making of test appraisals of real estate and other collateral securing loans made by savings banks doing business in this State, employ competent appraisers, or prescribe a list from which competent appraisers may be selected, for

the making of these appraisals by the Administrator, and any and all other acts incident to the making of test appraisals.

(b) In lieu of causing an appraisal to be made, the Administrator may accept an appraisal caused to be made by the insurer of accounts.

(c) The expense and cost of test appraisals made under this section shall be defrayed by the savings bank subjected to the test appraisals, and each savings bank doing business in this State shall pay all reasonable costs and expenses of the test appraisals when it is directed.
" § 54C-59. Relationship of savings banks with the Savings Institution Division.

(a) Except as provided by subsection (b) of this section, a savings bank or any director, officer, employee, or representative thereof shall not grant or give to the Administrator or to any employee of the Division or to their spouses, any loan or gratuity, directly or indirectly.

(b) Neither the Administrator nor any employee of the Division shall:

- (1) Hold an office or position in any State savings bank or exercise any right to vote on any State savings bank matter by reason of being a member of the savings bank;
- (2) Be interested, directly or indirectly, in any savings bank organized under the laws of this State; or
- (3) Undertake any indebtedness as a borrower, directly or indirectly, or act as endorser, surety, or guarantor, or sell or otherwise dispose of any loan or investment to any savings bank organized under the laws of this State.

(c) Notwithstanding subsection (b) of this section, the Administrator or any employee of the Division may be a deposit account holder and receive earnings on a deposit account.

(d) The Administrator or any employee of the Division shall dispose of any prohibited right or interest in a savings bank, either directly or indirectly, within 60 days after the date of the Administrator's or employee's appointment or employment. If the Administrator or any employee of the Division is indebted as borrower, directly or indirectly, or is an endorser, surety, or guarantor on a note, at the time of appointment or employment, the Administrator or employee may continue in that capacity until the loan is paid off.

(e) If the Administrator or any employee of the Division has a loan or other note acquired by a State savings bank through the secondary market, the Administrator or employee may continue with the debt until the loan or note is paid off.

" § 54C-60. Confidential information.

(a) The following records or information of the Commission, the Administrator, or the agent of either shall be confidential and shall not be disclosed:

- (1) Information obtained or compiled in preparation of or anticipation of, or during an examination, audit, or investigation of any association;
- (2) Information reflecting the specific collateral given by a named borrower, the specific amount of stock owned by a named stockholder, any stockholder list supplied to the Administrator under G.S. 54C-22, or specific deposit accounts held by a named member or customer;
- (3) Information obtained, prepared, or compiled during or as a result of an examination, audit, or investigation of any savings bank by an agency of the United States, if the records would be confidential under federal law or regulation;
- (4) Information and reports submitted by savings banks to federal regulatory agencies, if the records or information would be confidential under federal law or regulation;
- (5) Information and records regarding complaints from the public received by the Division that concern savings banks when the complaint would or could result in an investigation, except to the management of those savings banks; and
- (6) Any other letters, reports, memoranda, recordings, charts or other documents or records that would disclose any information of which disclosure is prohibited in this subsection.

(b) A court of competent jurisdiction may order the disclosure of specific information.

(c) The information contained in an application is deemed to be public information. Disclosure shall not extend to the financial statement of the incorporators nor to any further information deemed by the Administrator to be confidential.

(d) Nothing in this section shall prevent the exchange of information relating to savings banks and the business thereof with the representatives of the agencies of this State, other states, or of the United States, or with reserve or insuring agencies for savings banks. The private business and affairs of an individual or company shall not be disclosed by any person employed by the Division, any member of the Commission, or by any person with whom information is exchanged under the authority of this subsection.

(e) An official or employee of this State violating this section is liable to any person injured by disclosure of the confidential

information for all damages sustained thereby. Penalties provided are not exclusive of other penalties.

" § 54C-61. Annual license fees.

A state savings bank shall pay an annual license fee set by the Administrator, subject to the advice and consent of the Commission. The license fee shall be used to defray the expenses incurred by the Division in supervising State savings banks. The Administrator may license each State savings bank upon receipt of the license fee and filing of an application in the form prescribed by the Administrator.

" § 54C-62. Statement filed by savings bank; fees.

A State savings bank shall file in the office of the Administrator, on or before the first day of February in each year, in the form prescribed by the Administrator, a statement of the business standing and financial condition of the savings bank on the preceding thirty-first day of December, signed and sworn to by the secretary of the savings bank before a notary public. The statement shall be accompanied by a filing fee set by the Administrator, subject to the advice and consent of the Commission. The filing fees shall be used to defray the expenses incurred by the Division in supervising State savings banks.

" § 54C-63. Statement examined, approved, and published.

It is the duty of the Administrator to receive and thoroughly examine each annual statement required by G.S. 54C-73, and if made in compliance with the requirements thereof, each State savings bank shall publish an abstract of the same in one of the newspapers of the State, to be selected by the managing officer making the statement, and at the expense of the savings bank.

" § 54C-64. Prohibited practices.

A person who engages in any of the following acts or practices is guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the discretion of the court:

- (1) Defamation: Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral, written, or printed statement that is false regarding the financial condition of any savings bank.
- (2) False information and advertising: Making, publishing, disseminating, circulating, or otherwise placing before the public in any publication, media, notice, pamphlet, letter, poster, or any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the savings bank business or with respect to any person in the conduct of the savings bank business that is untrue, deceptive, or misleading.

- (3) Misleading advertising: Use of a name or designation by a savings bank in advertisements, announcements, or statements concerning the savings bank that does not include the words 'savings bank' and the designation 'SSB' in type that is equally prominent with the other terms in the name or designation of the savings bank.

" §§ 54C-65 to 54C-75: Reserved for future codification purposes.

"ARTICLE 5.

"Enforcement.

" § 54C-76. Cease and desist orders.

(a) If a person or savings bank is engaging in, or has engaged in, any unsafe or unsound practice or unfair and discriminatory practice in conducting the savings bank's business, or of any other law, rule, order, or condition imposed in writing by the Administrator, the Administrator may issue a notice of charges to the person or association. A notice of charges shall specify the acts alleged to sustain a cease and desist order, and state the time and place at which a hearing shall be held. A hearing before the Commission on the charges shall be held no earlier than seven days, and no later than 15 days after issuance of the notice. The charged institution is entitled to a further extension of seven days upon filing a request with the Administrator. The Administrator may also issue a notice of charges if there are reasonable grounds to believe that a person or savings bank is about to engage in any unsafe or unsound business practice, or any violation of this Chapter, or any other law, rule, or order. If, by a preponderance of the evidence, it is shown that any person or savings bank is engaged in, or has been engaged in, or is about to engage in, any unsafe or unsound business practice, or unfair and discriminatory practice or any violation of this Chapter, or any other law, rule, or order, a cease and desist order shall be issued. The Commission may issue a temporary cease and desist order to be effective for 15 days and which may be extended once for a period of 15 days.

(b) If a person or State savings bank is engaging in, has engaged in, or is about to engage in any unsafe or unsound practice in conducting the savings bank's business, or any violation of this Chapter or of any other law, rule, order, or condition imposed in writing by the Administrator, and the Administrator has determined that immediate corrective action is required, the Administrator may issue a temporary cease and desist order. A temporary cease and desist order is effective immediately upon issuance for a period of 15 days, and may be extended once for a period of 15 days. The order shall state its duration on its face and the words, 'Temporary Cease and Desist Order.' A hearing before the Commission shall be held

within the time that the order remains effective, at which time a temporary order may be dissolved or made permanent.

" § 54C-77. Civil penalties; State savings banks.

(a) Except as otherwise provided in this Article, a savings bank that is found to have violated this Article may be ordered to pay a civil penalty of up to twenty thousand dollars (\$20,000). A savings bank that is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article may be ordered to pay a civil penalty of up to twenty thousand dollars (\$20,000) for each day that the violation or failure to comply continues.

(b) To enforce this section, the Administrator may assess the penalty, appear in a court of competent jurisdiction, and move the court to order payment of the penalty. Before the assessment of the penalty, the Administrator shall hold a hearing, which shall comply with Article 3A of Chapter 150B of the General Statutes.

(c) If the Administrator determines that, as a result of a violation of this Article or of a failure to comply with any cease and desist order issued under the authority of this Article, a situation exists requiring immediate corrective action, the Administrator may impose the civil penalty in this section on the savings bank without a prior hearing, and the penalty is effective as of the date of notice to the association. Imposition of the penalty may be directly appealed to the Wake County Superior Court.

(d) Nothing in this section shall prevent anyone damaged by a State savings bank from bringing a separate cause of action in a court of competent jurisdiction.

" § 54C-78. Civil penalties; directors, officers, and employees.

(a) A person, whether a director, officer, or employee, who is found to have violated this Article, whether willfully or as a result of gross negligence, gross incompetency, or recklessness, may be ordered to pay a civil penalty of up to five thousand dollars (\$5,000) per violation. A person who is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article, may be ordered to pay a civil penalty of up to five thousand dollars (\$5,000) per violation for each day that the violation of failure to comply continues.

(b) To enforce this section, the Administrator may assess the penalty, appear in a court of competent jurisdiction, and move the court to order payment of the penalty. Before the assessment of the penalty, the Administrator shall hold a hearing, which shall comply with Article 3A of Chapter 150B of the General Statutes.

(c) Whenever the Administrator determines that an emergency exists that requires immediate corrective action, the Administrator, either before or after instituting any other action or proceeding

authorized by this Article, may request the Attorney General to institute a civil action in a court of competent jurisdiction, in the name of the State upon the relation of the Administrator seeking injunctive relief to restrain or enjoin the violation or threatened violation of this Article and for any other and further relief as the court may deem proper. Instituting an action for injunctive relief shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violation of this Article.

(d) Nothing in this section shall prevent anyone damaged by a director, officer, or employee of a State savings bank from bringing a separate cause of action in a court of competent jurisdiction.

" § 54C-79. Criminal penalties.

(a) This section shall in no event extend to persons who are found to have acted only with gross negligence, simple negligence, recklessness, or incompetence.

(b) In addition to any of the other penalties or remedies provided by this Article, the following are deemed to be misdemeanors and are punishable as provided in Chapter 14 of the General Statutes:

(1) The willful or knowing violation of this Article by any employee of the Division.

(2) The willful or knowing violation of a cease and desist order that has become final in that no further administrative or judicial appeal is available.

(c) In addition to any of the other penalties or remedies provided by this Article, the willful omission, making, or concurrence in making or publishing a written report, exhibit, or entry in a financial statement on the books of the association, which contains a material statement known to be false is deemed to be a misdemeanor and is punishable as provided in Chapter 14 of the General Statutes. For purposes of this section, 'material' shall mean 'so substantial and important as to influence a reasonable and prudent businessman or investor.'

(d) The Administrator may enforce this section in a court of competent jurisdiction.

" § 54C-80. Primary jurisdiction.

Whenever an agency of the United States government defers to the Administrator, or notifies the Administrator of pending action against a savings bank chartered by this State, or fails to exercise its authority over any State or federally chartered savings bank doing business in this State, the Administrator may exercise jurisdiction over the savings bank.

" § 54C-81. Supervisory control.

(a) Whenever the Administrator determines that a savings bank is conducting its business in an unsafe or unsound manner or in any

fashion that threatens the financial integrity or sound operation of the savings bank, the Administrator may serve a notice of charges on the savings bank, requiring it to show cause why it should not be placed under supervisory control. The notice of charges shall specify the grounds for supervisory control, and set the time and place for a hearing. A hearing before the Commission shall be held within 15 days after issuance of the notice of charges, and shall comply with Article 3A of Chapter 150B of the General Statutes.

(b) If, after the hearing provided in subsection (a) of this section, the Commission determines that supervisory control of the savings bank is necessary to protect the savings bank's members, customers, stockholders, or creditors, or the general public, the Administrator shall issue an order taking supervisory control of the savings bank. An appeal may be filed in the Wake County Superior Court.

(c) If the order taking supervisory control becomes final, the Administrator may appoint an agent to supervise and monitor the operations of the savings bank during the period of supervisory control. During the period of supervisory control, the savings bank shall act in accordance with any instructions and directions as may be given by the Administrator, directly or through a supervisory agent, and shall not act or fail to act except when to do so would violate an outstanding cease and desist order.

(d) Within 180 days of the date the order taking supervisory control becomes final, the Administrator shall issue an order approving a plan for the termination of supervisory control. The plan may provide for:

- (1) The issuance by the savings bank of capital stock;
- (2) The appointment of one or more officers, one or more directors, or one or more officers and directors;
- (3) The reorganization, merger, or consolidation of the savings bank; and
- (4) The dissolution and liquidation of the savings bank.

The order approving the plan shall not take effect for 30 days during which time period an appeal may be filed in the Wake County Superior Court.

(e) The costs incident to this proceeding shall be paid by the savings bank, provided the costs are found to be reasonable.

(f) For the purposes of this section, an order is deemed final if:

- (1) No appeal is filed within the specific time allowed for the appeal, or
- (2) After all judicial appeals are exhausted.

" § 54C-82. Removal of directors, officers, and employees.

(a) If, in the Administrator's opinion, one or more directors, officers, or employees of a savings bank has participated in or

consented to any violation of this Chapter, or any other law, rule, or order, or any unsafe or unsound business practice in the operation of any savings bank; or any insider loan not specifically authorized by or under this Chapter; or any repeated violation of or failure to comply with any savings bank's bylaws, the Administrator may serve a written notice of charges upon the director, officer, and employee in question, and the savings bank, stating the Administrator's intent to remove the director, officer, or employee. The notice shall specify the conduct and place for the hearing before the Commission to be held. A hearing shall be held no earlier than 15 days and no later than 30 days after the notice of charges is served, and it shall comply with Article 3A of Chapter 150B of the General Statutes. If, after the hearing, the Commission determines that the charges asserted have been proven by a preponderance of the evidence, the Administrator may issue an order removing the director, officer, or employee in question. The order is effective upon issuance and may include the entire board of directors or all of the officers of the savings bank.

(b) If it is determined that a director, officer, or employee of a savings bank has knowingly participated in or consented to any violation of this Chapter, or any other law, rule, or order, or engaged in any unsafe or unsound business practice in the operation of any savings bank, or any repeated violation of or failure to comply with any savings bank's bylaws, and that as a result, a situation exists requiring immediate corrective action, the Administrator may issue an order temporarily removing the person pending a hearing. The order shall state its duration on its face and the words, 'Temporary Order of Removal,' and is effective upon issuance, for a period of 15 days, and may be extended once for a period of 15 days. A hearing shall be held within 10 days of the expiration of a temporary order, or any extension thereof, at which time a temporary order may be dissolved or converted to a permanent order.

(c) Any removal under subsections (a) or (b) of this section is effective in all respects as if the removal had been made by the board of directors and the members or the stockholders of the savings bank in question.

(d) Without the prior written approval of the Administrator, no director, officer, or employee permanently removed under this section shall be eligible to be elected, reelected, or appointed to any position as a director, officer, or employee of that savings bank, nor shall that director, officer, or employee be eligible to be elected to or retain a position as a director, officer, or employee of any other State savings bank.

"§ 54C-83. Involuntary liquidation.

(a) The Administrator, with prior approval of the Commission, may take custody of the books, records, and assets of every kind and character of any savings bank organized and operated under this Chapter for any of the purposes enumerated in this section, if it reasonably appears from examinations or from reports made to the Administrator that:

- (1) The directors, officers, or liquidators have neglected, failed, or refused to take action that the Administrator may deem necessary for the protection of the savings bank or have impeded or obstructed an examination;
- (2) The net worth of the savings bank is impaired to the extent that the realizable value of its assets is insufficient to pay in full its creditors and holders of deposit accounts;
- (3) The business of the savings bank is being conducted in a fraudulent, illegal, or unsafe manner, or that the savings bank is in an unsafe or unsound condition to transact business; for purposes of this subdivision, any savings bank that, except as authorized in writing by the Administrator, fails to make full payment of any withdrawal when due is in an unsafe or unsound condition to transact business, notwithstanding the certificate of incorporation or the statutes or regulations with respect to payment of withdrawals in event a savings bank does not pay all withdrawals in full;
- (4) The officers, directors, or employees have assumed duties or performed acts in excess of those authorized by statute or regulation or charter, or without supplying the required bond;
- (5) The savings bank has experienced a substantial dissipation of assets or earnings due to any violation or violation of statute or regulation, or due to any unsafe or unsound practice or practices;
- (6) The savings bank is insolvent, or is in imminent danger of insolvency or has suspended its ordinary business transactions due to insufficient funds; or
- (7) The savings bank is unable to continue operations.

(b) Unless the Administrator finds that an emergency exists that may result in loss to members, deposit account holders, stockholders, or creditors, and that requires that the Administrator take custody immediately, the Administrator shall first give written notice to the directors and officers specifying the conditions criticized and allowing a reasonable time in which corrections may be made before a receiver shall be appointed as outlined in subsection (d) of this section.

(c) The purposes for which the Administrator may take custody of a savings bank include examination or further examination, conservation of its assets, restoration of impaired capital, and the making of any reasonable or equitable adjustment deemed necessary by the Administrator under any plan of reorganization.

(d) If the Administrator, after taking custody of a savings bank, finds that one or more of the reasons for having taken custody continue to exist through the period of custody, with little or no likelihood of amelioration of the situation, then the Administrator shall appoint as receiver or coreceiver any qualified person, firm, or corporation for the purpose of liquidation of the savings bank, which receiver shall furnish bond in form, amount, and with surety as the Administrator may require. The Administrator may appoint the association's deposit account insurance corporation or its nominee as the receiver, and the insuring corporation shall be permitted to serve without posting bond.

(e) In the event the Administrator appoints a receiver for a savings bank, the Administrator shall mail a certified copy of the appointment order by certified mail to the address of the savings bank as it appears on the records of the Division, and to any previous receiver or other legal custodian of the savings bank, and to any court or other authority to which the previous receiver or other legal custodian is subject. Notice of the appointment may be published in a newspaper of general circulation in the county where the savings bank has its principal office.

(f) Whenever a receiver for a savings bank is appointed under subsection (d) of this section, the savings bank may within 30 days thereafter bring an action in the Superior Court of Wake County, for an order requiring the Administrator to remove the receiver.

(g) The duly appointed and qualified receiver shall take possession promptly of the savings bank for which the receiver has been so appointed, in accordance with the terms of the appointment, by service of a certified copy of the Administrator's appointment order upon the savings bank at its principal office through the officer or employee who is present and appears to be in charge. Immediately upon taking possession of the savings bank, the receiver shall take possession and title to books, records, and assets of every description of the savings bank. The receiver, by operation of law and without any conveyance or other instrument, act or deed, shall succeed to all the rights, titles, powers, and privileges of the savings bank, its members or stockholders, holders of deposit accounts, its officers and directors or any of them; and to the titles to the books, records, and assets of every description of any previous receiver or other legal custodian of the savings bank. The members, stockholders, holders of deposit

accounts, officers or directors, or any of them, shall not thereafter, except as expressly provided in this section have or exercise any rights, powers or privileges or act in connection with any assets or property of any nature of the savings bank in receivership. The Administrator, with the approval of the Commission, may at any time, direct the receiver to return the savings bank to its previous or a newly constituted management. The Administrator may provide for a meeting or meetings of the members or stockholders for any purpose, including the election of directors or an increase in the number of directors, or both, or the election of an entire new board of directors; and may provide for a meeting or meetings of the directors for any purpose including the filling of vacancies on the board, the removal of officers and the election of new officers, or for any of these purposes. Any meeting of members or stockholders, or of directors, shall be supervised or conducted by a representative of the Administrator.

(h) A duly appointed and qualified receiver may:

- (1) Demand, sue for, collect, receive and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, chooses in action, bills, notes and property of every description of the savings bank;
- (2) Foreclose mortgages, deeds of trust, and other liens executed to the savings bank to the extent the savings bank would have had this right;
- (3) Institute suits for the recovery of any estate, property, damages, or demands existing in favor of the savings bank, and shall, upon the receiver's own application, be substituted as party plaintiff in the place of the savings bank in any suit or proceeding pending at the time of the receiver's appointment;
- (4) Sell, convey, and assign all the property rights and interests owned by the savings bank;
- (5) Appoint agents;
- (6) Examine and investigate papers and persons, and pass on claims as provided in the regulations as prescribed by the Administrator;
- (7) Make and carry out agreements with the insuring corporation or with any other financial institution for the payment or assumption of the savings bank's liabilities, in whole or in part, and to sell, convey, transfer, pledge, or assign assets as security or otherwise and to make guarantees in connection therewith; and
- (8) Perform all other acts that might be done by the employees, officers, and directors.

These powers shall be continued in effect until liquidation and dissolution or until return of the savings bank to its prior or newly constituted management.

(i) A receiver may, at any time during the receivership and before final liquidation, be removed and a replacement appointed by the Administrator.

(j) The Administrator may determine that the liquidation proceedings should be discontinued. The Administrator shall then remove the receiver and restore all the rights, powers, and privileges of its members and stockholders, customers, employees, officers, and directors, or restore these rights, powers, and privileges to its members, stockholders, and customers, and grant these rights, powers, and privileges to a newly constituted management, all as of the time of the restoration of the savings bank to its management unless another time for the restoration is specified by the Administrator. The return of a savings bank to its management or to a newly constituted management from the possession of a receiver shall, by operation of law and without any conveyance or other instrument, act or deed, vest in the savings bank the title to all property held by the receiver in the capacity as receiver for the savings bank.

(k) A receiver may also be appointed under the authority of G.S. 1-502. No judge or court, however, shall appoint a receiver for any State savings bank unless five days' advance notice of the motion, petition, or application for appointment of a receiver has been given to the savings bank and to the Administrator.

(l) Following the appointment of a receiver, the Administrator may request the Attorney General to institute an action in the name of the Administrator in the superior court against the savings bank for the orderly liquidation and dissolution of the association, and for an injunction to restrain the officers, directors, and employees from continuing the operation of the savings bank.

(m) Claims against a State association in receivership shall have the following order of priority for payment:

- (1) Costs, expenses, and debts of the savings bank incurred on or after the date of the appointment of the receiver, including compensation for the receiver.
- (2) Claims of holders of special purpose or thrift accounts.
- (3) Claims of holders of deposit accounts.
- (4) Claims of general creditors.
- (5) Claims of stockholders of a stock savings bank.
- (6) All remaining assets to members and stockholders in an amount proportionate to their holdings as of the date of the appointment of the receiver.

(n) All claims of each class described within subsection (m) of this section shall be paid in full so long as sufficient assets remain. Members of the class for which the receiver cannot make payment in full because assets will be depleted during payment to that class shall be paid an amount proportionate to their total claims.

(o) The Administrator may direct the payment of claims for which no provision is made in this section, and may direct the payment of claims within a class.

(p) When all assets of the savings bank have been fully liquidated, and all claims and expenses have been paid or settled, and the receiver has recommended a final distribution, the dissolution of the savings bank in receivership shall be accomplished in the following manner:

(1) The receiver shall file with the Administrator a detailed report, in a form to be prescribed by the Administrator, of the receiver's acts and proposed final distribution, and dissolution.

(2) Upon the Administrator's approval of the final report of the receiver, the receiver shall provide notice and thereafter shall make the final distribution, in any manner as the Administrator may direct.

(3) When a final distribution has been made except as to any unclaimed funds, the receiver shall deposit the unclaimed funds with the Administrator and shall deliver to the Administrator all books and records of the dissolved association.

(4) Upon completion of the foregoing procedure, and upon the joint petition of the Administrator and receiver to the superior court, the court may find that the savings bank should be dissolved, and following publication of notice of dissolution as the court may direct, the court may enter a decree of final resolution and the savings bank shall therefore be dissolved.

(5) Upon final dissolution of the savings bank in receivership or at any time as the receiver shall be otherwise relieved of duties, the Administrator shall cause an audit to be conducted, during which the receiver shall be available to assist. The accounts of the receiver shall then be ruled upon by the Administrator and Commission and if approved, the receiver shall thereupon be given a final and complete discharge and release.

" § 54C-84. Judicial review.

A person or State savings bank against whom a cease and desist order is issued or a fine is imposed may have the order or fine reviewed by a court of competent jurisdiction. Except as otherwise

provided, an appeal may be made only within 30 days of the issuance of the order or the imposition of the fine, whichever is later.

" § 54C-85. Indemnity.

No person who is fined or penalized for a violation of any criminal provision of this Article shall be reimbursed or indemnified in any fashion by the savings bank for the fine or penalty.

" § 54C-86. Cumulative penalties.

All penalties, fines, and remedies provided by this Article are cumulative.

" § 54C-87. Emergency limitations.

The Administrator, with the approval of the Governor, may impose a limitation upon the amounts withdrawable or payable from deposit accounts of savings banks during any specifically defined period when the limitation is in the public interest and welfare.

" §§ 54C-88 to 54C-99: Reserved for future codification purposes.

"ARTICLE 6.

"Corporate Administration.

" § 54C-100. Membership of a mutual association.

The membership of a mutual State savings bank shall consist of:

- (1) Those who hold deposit accounts in a savings bank, and
- (2) Those who borrow funds and those who become obligated on a loan from the savings bank, for as long as the loan remains unpaid and the borrower remains liable to the savings bank for the payment of the loan.

A person, as a matter of right or in a trust or other fiduciary capacity, or any partnership, association, corporation, political subdivision, or public or governmental unit or entity may become a member of a mutual savings bank. Members shall be possessed of voting rights and any other rights as are provided by a savings bank's certificate of incorporation and bylaws as approved by the Administrator. Members are the owners of a mutual savings bank.

" § 54C-101. Directors.

(a) The directors of a mutual savings bank shall be elected by the members at an annual meeting, held under G.S. 54C-106, for any terms as the bylaws of the savings bank may provide. Director's terms may be classified in the certificate of incorporation. Voting for directors by deposit account holders shall be weighted according to the total amount of deposit accounts held by the members, subject to any maximum number of votes per member which a savings bank may choose to prescribe in its bylaws. Voting rights for borrowers shall be fully prescribed in a detailed manner in the bylaws of the savings bank.

(b) The directors of a stock savings bank shall be elected by the stockholders at an annual meeting, held under G.S. 54C-106, for any

terms as the bylaws of the savings bank may provide. Director's terms may be classified in the certificate of incorporation.

(c) A director of a State savings bank shall have a significant ownership interest in the State savings bank.

(d) A State savings bank shall have no less than five directors.

" § 54C-102. Bylaws.

The bylaws and any amendments shall be certified by the appropriate corporate official and submitted to the Administrator for approval before they may become effective.

" § 54C-103. Duties and liabilities of officers and directors to their associations.

Officers and directors of a State savings bank shall act in a fiduciary capacity towards the savings bank and its members or stockholders. They shall discharge duties of their respective positions in good faith, and with that diligence and care which ordinarily prudent persons would exercise under similar circumstances in like positions.

" § 54C-104. Conflicts of interest.

Each director, officer, and employee of a State savings bank has a fundamental duty to avoid placing himself in a position which creates, or which leads to or could lead to a conflict of interest or appearance of a conflict of interest having adverse effects on the interests of members, customers, or stockholders of the savings bank, soundness of the savings bank, and the purposes of this Chapter.

" § 54C-105. Voting rights.

Voting rights in the affairs of a State savings bank may be exercised by members and stockholders by voting either in person or by proxy.

" § 54C-106. Annual meetings notice required.

(a) A savings bank shall hold an annual meeting of its members or stockholders. The annual meeting shall be held at a time and place as shall be provided in the bylaws or determined by the board of directors.

(b) The board of directors of a mutual savings bank shall cause to be published once a week for two weeks preceding such meeting, in a newspaper of general circulation in the county where such savings bank has its principal office, a notice of the meeting, signed by the savings bank's secretary, and stating the time and place where it is to be held. In addition to the foregoing notice, a savings bank shall disseminate additional notice of any annual meeting by notice made available to all members entering the premises of any office or branch of the savings bank in the regular course of business by posting therein, in full view of the public and its members, one or more conspicuous signs or placards announcing the pending meeting, the time, date, and place of the meeting and the availability of additional information. Printed matter shall be freely available to the members

containing any information as may be prescribed in rules issued by the Administrator. The additional notice shall be given at any time within the period of 60 days before and 14 days before the meeting and shall continue through the time of the meeting.

(c) The board of directors of a stock savings bank shall cause a written or printed notice, signed by the savings bank's secretary and stating the time and place of the annual meeting, to be delivered not less than 10 days nor more than 50 days before the date of the meeting, either personally or by mail to each stockholder of record entitled to vote at the meeting. If mailed, the notice is deemed to be delivered when deposited in the United States postal service addressed to the stockholder at the address as it appears on the records of the corporation, with postage thereon prepaid.

" § 54C-107. *Special meetings; notice required.*

(a) Special meetings of members or stockholders of a savings bank may be called by the president or the board of directors or by any other officers or persons as may be provided for in the charter or bylaws of the savings bank.

(b) Notice of any special meeting of members or stockholders shall be given in the same manner as provided for annual meetings under G.S. 54C-106.

" § 54C-108. *Quorum.*

Unless otherwise provided in the savings bank's charter or bylaws, 50 holders of deposit accounts in a mutual savings bank or 50 stockholders or a majority of shares eligible to vote in a stock savings bank, present in person or represented by proxy, shall constitute a quorum at any annual or special meeting.

" § 54C-109. *Bonding.*

(a) A savings bank shall maintain a blanket indemnity bond of at least a minimum amount as prescribed by the Administrator.

(b) A savings bank that employs collection agents, who for any reason are not covered by the bond required in this section, shall provide for the bonding of each agent in an amount equal to at least twice the average monthly collections of the agent. The agents shall be required to make settlement with the association at least once monthly. No coverage by bond will be required of any agent that is a bank or an association insured by the Federal Deposit Insurance Corporation. The amount and form of the bonds and the sufficiency of the surety thereon shall be approved by the board of directors and the Administrator before it is valid. A bond shall provide that its cancellation, either by the surety or by the insured, shall not become effective unless and until 30 days' notice in writing shall have been given to the Administrator.

" §§ 54C-110 to 54C-120: Reserved for future codification purposes.

"ARTICLE 7."Loans and Investments." § 54C-121. Loans.

(a) A savings bank may loan funds as follows:

- (1) On the security of deposit accounts, but no loan shall exceed the withdrawal value of the pledged deposit account.
- (2) On the security of real property:
 - a. Of a value, determined in accordance with this Chapter and any appraisal rules as the Administrator may adopt sufficient to provide good and ample security for the loan;
 - b. With a fee simple title or a leasehold title of no less duration than 10 years beyond the maturity of the loan;
 - c. With the title established by any evidence of title as is consistent with sound lending practices; and
 - d. With the security interest in such real estate evidenced by an appropriate written instrument and the loan evidenced by a note, bond, or similar written instrument. A loan on the security of the whole of the beneficial interest in a land trust satisfies the requirements of this sub-subdivision if the title to the land is held by a corporate trustee and if the real estate held in the land trust meets the other requirements of this subdivision.
- (3) For the purpose of repair, improvement, rehabilitation, furnishing, or equipment of real estate.
- (4) For the purpose of financing or refinancing an existing ownership interest, in certificates of stock, certificates of beneficial interest, or other evidence of an ownership interest in, and a proprietary lease from, a corporation, trust or partnership formed for the purpose of the cooperative ownership of real estate, secured by the assignment or transfer of the certificates or other evidence of ownership of the borrower.
- (5) For the purchase of loans that, at the time of purchase, the savings bank could make in accordance with this Chapter.
- (6) For the purchase of installment contracts for the sale of real estate, and title thereto that is subject to the contract, but in each instance only if the savings bank, at the time of purchase, could make a mortgage loan of the same amount and for the same length of time on the security of the real estate.
- (7) For the purchase of loans guaranteed or insured, wholly or in part, by the United States or any of its instrumentalities.

- (8) For secured or unsecured financing for business, corporate, personal, family, or household purposes, or for secured or unsecured loans for agricultural or commercial purposes, subject to any rules as the Administrator may adopt.
- (9) For the purpose of mobile home financing.
- (10) For loans secured by no more than ninety percent (90%) of the cash surrender value of any life insurance policy.
- (11) For loans on any collateral that would be a legal investment if made by the savings bank under this Chapter.

(b) Notwithstanding any provision of this Chapter to the contrary, a savings bank may make any loan that the savings bank could make if it were incorporated and operating as a federal association or as a State or national bank.

" § 54C-122. Lending procedures.

(a) The board of directors shall establish procedures by which loans are to be considered, approved, and made by the savings bank.

(b) All actions on loan applications to the savings bank shall be reported to the board of directors at its next meeting.

(c) Subject to any rules as the Administrator deems appropriate, a savings bank may lend funds on any collateral deemed sufficient by the board of directors to properly secure loans. Loans made solely upon security of collateral consisting of stock or equity securities that are not listed on a national stock exchange or regularly quoted and offered for trade on an over-the-counter market are considered loans without security.

(d) A savings bank may lend funds without requiring security. No unsecured loan shall exceed the maximum amount authorized by rules of the Administrator.

(e) A savings bank may make insured or guaranteed loans in accordance with G.S. 53-45.

(f) A savings bank may invest any funds on hand in the purchase of loans of a type that the savings bank could make in accordance with this Chapter.

(g) A savings bank may invest in a participating interest in loans of a type that the savings bank could make in accordance with this Chapter.

(h) A savings bank may sell any loan, including any participating interest in a loan.

" § 54C-123. Prohibited security.

No savings bank may accept its own capital stock or its own mutual capital certificates as security for any loan made by the savings bank.

" § 54C-124. Loans conditioned on certain transactions prohibited.

(a) No savings bank or service corporation thereof shall require, as a condition of making a loan, that the borrower contract with any specific person or organization for particular services.

(b) A savings bank or service corporation thereof shall notify borrowers before the loan commitment of their right to select the attorney or law firm rendering legal services in connection with the loan, and the person or organization rendering insurance services in connection with the loan. These persons or organizations shall be approved by the savings bank's board of directors, under any rules as the Administrator may prescribe.

(c) A savings bank or service corporation thereof may require borrowers to reimburse the savings bank for legal services rendered to it by its own attorney only when the fee is limited to legal services required by the making of the loan.

" § 54C-125. *Loan expenses and fees.*

(a) Subject to Chapter 24 of the General Statutes, a savings bank may require borrowers to pay all reasonable expenses incurred by the savings bank in connection with making, closing, disbursing, extending, adjusting, or renewing loans. The charges may be collected by the savings bank from the borrower and paid to any persons, including any director, officer, or employee of the savings bank who may render services in connection with the loan, or the charges may be paid directly by the borrower.

(b) A savings bank may require a borrower to pay a reasonable charge for late payments made during the course of repayment of a loan. Subject to G.S. 24-10.1, the payments may be levied only upon the terms and conditions that are fixed by the savings bank's board of directors and agreed to by the borrower in the loan contract.

(c) Nothing in this Article shall be construed to modify Chapter 24 of the General Statutes, or other applicable law, or to allow fees, charges, or interest beyond that permitted by Chapter 24 of the General Statutes or other applicable law.

" § 54C-126. *Methods of loan repayment.*

Subject to any rules as the Administrator may prescribe, a savings bank shall agree in writing with borrowers as to the method or plan by which an indebtedness shall be repaid.

" § 54C-127. *Insider loans.*

The Administrator may adopt rules no less stringent than the requirements of the appropriate federal regulatory authority to govern the making of loans to officers and directors, and their associates, and companies or other business entities controlled by them.

" § 54C-128. *Rulemaking power of Administrator.*

Any rule that the Administrator may adopt in respect to loans permitted to be made by State savings banks as may be reasonably

necessary to assure that the loans are in keeping with sound lending practices and to promote the purposes of this Chapter shall not prohibit a savings bank from making any loan that is a permitted loan for federal savings banks under federal regulatory authority.

" § 54C-129. *Nonconforming loans and investments.*

Unless otherwise provided, every loan or other investment made in violation of this Chapter is due and payable according to its terms and the obligation thereof is not impaired; provided, that the violation consists only of the lending of an excessive sum on authorized security or of investing in an unauthorized investment.

" § 54C-130. *Limitation on loans to one borrower.*

(a) The total loans and extensions of credit, both direct and indirect, by a savings bank to any person, other than a municipal corporation for money borrowed, outstanding at one time and not fully secured, as determined in a manner consistent with subsection (b) of this section, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed fifteen percent (15%) of the net worth of the savings bank. The total liabilities of a firm shall include the liabilities of the members of the firm.

(b) The total loans and extensions of credit, both direct and indirect, by a savings bank to any person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed ten percent (10%) of the net worth of the savings bank. This limitation shall be separate from and in addition to the limitation contained in subsection (a) of this section.

(c) For purposes of this section, the term 'person' is deemed to include an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed in this subsection. Loans or extensions of credit to one person include loans made to other persons when the proceeds of the loans or extensions of credit are to be used for the direct benefit of the first person or when the persons are engaged in a common enterprise.

(d) The limitations of this section shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same, made by any federal reserve bank or by the United States or any instrumentality of the United States, including any corporation wholly owned directly or indirectly by the United States.

(e) The limitations of this section shall not apply to loans or obligations made for the following:

- (1) For any purpose otherwise permitted by this Chapter, not to exceed five hundred thousand dollars (\$500,000);
- (2) To develop domestic residential housing units, not to exceed the lesser of thirty million dollars (\$30,000,000) or thirty percent (30%) of the savings bank's net worth if the purchase price of each single family dwelling unit which is financed under this provision does not exceed five hundred thousand dollars (\$500,000) and the loans or obligations made under this provision do not, in the aggregate, exceed one hundred fifty percent (150%) of the savings bank's net worth; or
- (3) Loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted in good faith, not to exceed fifty percent (50%) of the savings bank's net worth.

" § 54C-131. Investment in banking premises.

A savings bank may invest in real property and equipment and in leasehold improvements to rented facilities necessary for the conduct of its business and in real property to be held for its future use. A savings bank may invest in office buildings and appurtenances for the purpose of the transaction of the savings bank's business. This investment may not be made without the prior written approval of the Administrator if the total amount of these investments exceeds fifty percent (50%) of the savings bank's net worth. Facilities, furniture, and fixtures leased for the purpose set forth in this section are not included in this limitation.

" § 54C-132. United States obligations.

A savings bank may invest in any obligation issued and fully guaranteed in principal and interest by the United States government or any instrumentality of the United States.

" § 54C-133. North Carolina obligations.

A savings bank may invest in any obligation issued and fully guaranteed in principal and interest by the State or any instrumentality of the State.

" § 54C-134. Federal Home Loan Bank obligations.

A savings bank may invest in the stock of the Federal Home Loan Bank of which the association is a member, and in bonds or other evidences of indebtedness or obligation of any Federal Home Loan Bank.

" § 54C-135. Deposits in depository institutions.

A savings bank may invest in certificates of deposit, time-insured deposits, savings accounts, demand deposits, or withdrawable accounts of any banks, associations, or savings banks as are approved by the board of directors of the savings bank.

" § 54C-136. Federal government-sponsored enterprise obligations.

A savings bank may invest in stock or other evidences of indebtedness or obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any other federal government sponsored enterprise, or any successor thereto.

" § 54C-137. Municipal and county obligations.

A savings bank may invest in bonds or other evidences of indebtedness that are direct general obligations of any county, city, town, village, school district, sanitation, or park district, or other political subdivision or municipal corporation of this State; or in bonds or other evidences of indebtedness that are payable from revenues or earnings specifically pledged therefor, which are issued by a county or a political subdivision or municipal corporation of a county in this State.

" § 54C-138. Stock in education agency.

A savings bank may invest in stock or obligations of any corporation doing business in this State, or of any agency of this State or of the United States, where the principal business of the corporation or agency is to make loans for the financing of a college or university education, or education at an industrial education center, technical institute, or community college.

" § 54C-139. Industrial development corporation stock.

A savings bank may invest in stock or other evidence of indebtedness or obligations of business or industrial development corporations chartered by this State or by the United States.

" § 54C-140. Urban renewal investment corporation stock.

A savings bank may invest in stock or other evidence of indebtedness or obligations of an urban renewal investment corporation chartered under the laws of this State or of the United States.

" § 54C-141. Limitations on investment in stocks and securities.

(a) No savings bank shall make an investment in the capital stock of any other State or federal depository institution that represents more than five percent (5%) of the capital stock of that depository institution.

(b) No savings bank shall invest in stock of other than investment grade. No savings bank shall invest in the aggregate more than fifty percent (50%) of its net worth in the stocks of other corporations, firms, partnerships, or companies, unless the stock is purchased to protect the savings bank from loss. Of this amount, no more than two and one-half percent (2 1/2%) of the savings bank's net worth may be invested in the stocks or securities of any one issuer. This limitation shall not apply to stock or ownership interests in corporations, firms,

partnerships, or companies that are subsidiaries of the savings bank. The term 'invest' is deemed to include operating a business entity acquired by the savings bank, provided, however, that no savings bank shall make any investment resulting in operations that are not closely related to the savings bank business without the prior written approval of the Administrator. Any stocks owned or hereafter acquired in excess of the limitations imposed in this section shall be disposed of at public or private sale within six months after the date of acquiring the same, and if not so disposed of they shall be charged to the profit and loss account, and no longer carried on the books as an asset. The limit of time in which the stocks are disposed of or charged off the books of the savings bank may be extended by the Administrator if the Administrator determines it is in the best interest of the savings bank that the extension be granted.

(c) This limitation shall not apply with respect to obligations of the government of the United States or its agencies, or to other obligations guaranteed by the United States, North Carolina, or any other state, or of a city, town, township, county, school district, or other political subdivision of this State.

" § 54C-142. Suspension of investment and loan limitation.

The board of directors of any savings bank may, by resolution duly passed at a meeting of the board, request the Administrator to suspend temporarily the limitations on loans and investments as they may apply to any particular loan or investment in excess of the limitations of G.S. 54C-130 and G.S. 54C-141 that the savings bank desires to make. Upon receipt of a duly certified copy of the resolution, the Administrator may suspend the limitations on loans and investments insofar as they would apply to the loan or investment that the savings bank desires to make, as long as every loan or investment is amply secured and is for a period not longer than 36 months.

" § 54C-143. Commercial lending.

Subject to any rules that the Administrator deems appropriate, a savings bank may lend and invest no more than fifteen percent (15%) of its total assets in commercial loans. A commercial loan is for business, commercial, corporate, and agricultural purposes.

" § 54C-144. Service corporations.

(a) A savings bank or group of savings banks or associations may establish service corporations under Chapter 55 of the General Statutes, provided that the Administrator receives copies of the proposed articles of incorporation and bylaws for approval, before filing them with the Secretary of State. A savings bank may also invest in the capital stock, obligations, or other securities of existing service corporations.

(b) No savings bank may make any investment in service corporations if its aggregate investment would exceed ten percent (10%) of its total assets.

(c) A service corporation is subject to audit and examination by the Administrator, and the service corporation shall pay the cost of examination.

(d) The permitted activities of a service corporation shall be described in the rules adopted by the Administrator.

(e) The location of the principal and branch offices of a service corporation shall be approved by the Administrator.

" § 54C-145. Parity in loans or investments.

Subject to any limitations and restrictions as the Administrator may prescribe through rules, a savings bank may make any loan or investment, or engage in any activity, which may be permitted under State law for banks or under the laws of the United States for federal associations or national banks whose principal offices are located within this State.

" § 54C-146. Certain powers granted to State savings banks.

(a) In addition to the powers granted under this Chapter, but subject to any rules that the Administrator may prescribe, a savings bank incorporated or operated under this Chapter may:

- (1) Establish off the premises of any principal office or branch a customer communications terminal, point of sale terminal, automated teller machine, automated or other direct or remote information processing device or machine, whether manned or unmanned, through or by means of which funds or information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise to or from a savings bank terminal or terminals controlled or used by or with other parties. The establishment and use of a device or machine is not deemed to constitute a branch office, and the capital requirements and standards for approval of a branch office as set forth in the statutes and regulations are not applicable to the establishment of any off-premises terminal, device or machine. Savings banks may, through mutual consent, share on-premises, unmanned, automated teller machines and cash dispensers.
- (2) Issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations.
- (3) Act as a trustee, executor, administrator, guardian, or in any other fiduciary capacity.

- (4) Become a member of a clearing house association and pledge assets required for its qualification.
- (5) a. Mutual capital certificates may be issued by State-chartered savings banks and sold directly to subscribers or through underwriters, and the certificates shall constitute part of the general reserve and net worth of the issuing savings bank. The Administrator, in the rules relating to the issuance and sale of mutual capital certificates, shall provide that the certificates:
 - 1. Are subordinate to all savings accounts, savings certificates, and debt obligations;
 - 2. Constitute a claim in liquidation on the general reserves, surplus and undivided profits of the savings bank remaining after the payment of all savings accounts, savings certificates, and debt obligations;
 - 3. Are entitled to the payment of dividends; and
 - 4. May have a fixed or variable dividend rate.
- b. The Administrator shall provide in the rules for charging losses to the mutual capital, reserves, and other net worth accounts.

(b) To the extent that the Administrator may authorize by rules, a savings bank may issue notes, bonds, debentures, or other obligations or securities.

"§§ 54C-147 to 54C-160: Reserved for future codification purposes.

"ARTICLE 8.

"Operations.

" § 54C-161. Generally accepted accounting principles.

A savings bank shall maintain its books and records in accordance with generally accepted accounting principles.

" § 54C-162. Liquidity.

A savings bank shall maintain cash and readily marketable investments in an amount that may be established in the rules of the Administrator, but the requirement shall not be less than ten percent (10%) of the assets of the savings bank. Upon receipt of a duly certified copy of a resolution by the board of directors of any savings bank requesting a temporary suspension, the Administrator may suspend the liquidity requirement for a period not longer than six months.

" § 54C-163. Net worth requirement.

A savings bank shall maintain net worth in an amount that may be established in the rules of the Administrator, but the requirement shall not be less than five percent (5%) of the assets of the savings bank. Upon receipt of a duly certified copy of a resolution by the board of directors of any savings bank requesting a temporary suspension, the

Administrator may suspend the net worth requirement for a period not longer than six months.

" § 54C-164. Deposit accounts.

(a) A savings bank may raise capital through the solicitation of deposits from any person, natural or corporate, except as restricted or limited by law, or by any rules that the Administrator may prescribe.

(b) A savings bank may receive deposits of funds upon any terms as the contract of deposit shall provide subject to withdrawals or to be paid upon checks of the depositor.

" § 54C-165. Joint accounts.

(a) Any two or more persons may open or hold a withdrawable account or accounts. The withdrawable account and any balance of the account is held by them as joint tenants, with or without right of survivorship, as the contract shall provide. The account may also be held under G.S. 41-2.1 and have incidents set forth in that section, but if the account is held under G.S. 41-2.1, the contract shall set forth that fact as well. Unless the persons establishing the account have agreed with the savings bank that withdrawals require more than one signature, payment by the savings bank to, or on the order of, any persons holding an account authorized by this section is a total discharge of the savings bank's obligation as to the amount so paid. Funds in a joint account established with the right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds are subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established under that section. Payment by the savings bank of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the savings bank for the funds so paid, but the personal representative's authority to collect the funds from the surviving joint tenant or tenants is not terminated. A pledge of the account by a holder shall, unless otherwise specifically agreed upon, be a valid pledge and transfer of the account, or of the amount so pledged, and shall not operate to sever or terminate the joint ownership of all or any part of the account. Persons establishing an account under this section shall sign a statement showing their election of the right of survivorship in the account, and containing language set forth in a conspicuous manner and substantially similar to the following:

'SAVINGS BANK (or name of institution) JOINT ACCOUNT
WITH RIGHT OF SURVIVORSHIP

G.S. 54C-165

We understand that by establishing a joint account under G.S. 54C-165 that:

1. The savings bank (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless we have agreed with the savings bank that withdrawals require more than one signature; and
2. Upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

We DO elect to create the right of survivorship in this account.

(a) This section is not deemed exclusive. Deposit accounts not conforming to this section are governed by other applicable law as appropriate.

(b) Nothing in this section is construed to repeal or modify any provision of G.S. 105-24 relating to the administration of the estate tax laws of this State or any other law relating to estate taxes. This section shall regulate, govern, and protect the savings bank in its relationships with the joint owners of deposit accounts.

(c) No addition to the account nor any withdrawal or payment shall affect the nature of the account as a joint account or affect the right of any tenant to terminate the account.

" § 54C-166. Trust accounts.

(a) If a person establishing a withdrawable account executes a written agreement with the savings bank containing a statement that it is executed under this subsection and providing for the account to be held in the name of the person as trustee for not more than one person designated as beneficiary, the account and any balance of the account is held as a trust account with the following incidents:

- (1) The trustee during the trustee's lifetime may change the designated beneficiary by a written direction to the savings bank.
- (2) The trustee may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the trustee's personal order. The payment or withdrawal shall constitute a revocation of the trust agreement as to the amount withdrawn.
- (3) If the beneficiary is living and of legal age at the death of the trustee, the beneficiary is the holder of the account, and payment by the savings bank to the holder is a total

discharge of the savings bank's obligation as to the amount paid.

- (4) If the beneficiary predeceases the trustee, the account shall become an individual account of the trustee and shall have the legal incidents of an individual account.
- (5) If the named beneficiary is not of legal age at the death of the trustee, the savings bank shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the savings bank shall hold the funds in a similar interest-bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.
- (6) Funds in a trust account established under this subsection shall belong to the beneficiary upon the death of the trustee and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the savings bank of funds in the trust account to the beneficiary shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the savings bank for the funds so paid, but the personal representative's authority to collect the funds from the beneficiary is not terminated.

The person establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the following:

'SAVINGS BANK (or name of institution) TRUST ACCOUNT
G.S. 54C-166(a)

I understand that by establishing a trust account under G.S. 54C-166(a) that:

1. During my lifetime I may withdraw the money in the account; and
2. By written direction to the savings bank (or name of institution) I may change the beneficiary; and
3. Upon my death the money remaining in the account will belong to the beneficiary, and the money will not be inherited by my heirs or be controlled by my will.

(a1) This section is not deemed exclusive. Deposit accounts not conforming to this section are governed by other applicable law, as appropriate.

(b) Whenever the beneficiary of a trust account does not survive the trustee, then the account and any balance of the account that exists

is held by the trustee in the trustee's own right and for the trustee's own use and benefit.

(c) No addition to the accounts, nor any withdrawal, payment, or change of beneficiary shall affect the nature of the accounts as trust accounts, or affect the right of a trustee to terminate the account.

(d) Nothing in this section is construed to repeal or modify any provision of G.S. 105-24 relating to the administration of estate tax laws of this State or any other law relating to estate taxes.

" § 54C-167. Personal agency accounts.

(a) A person may open a personal agency account by written contract containing a statement that it is executed under this section. A personal agency account may be a checking account, savings account, time deposit, or any other type of withdrawable account or certificate. The written contract shall name an agent who shall have authority to act on behalf of the depositor in regard to the account as set out in this subsection. The agent shall have the authority to:

- (1) Make, sign, or execute checks drawn on the account or otherwise make withdrawals from the account;
- (2) Endorse checks made payable to the principal for deposit only into the account; and
- (3) Deposit cash or negotiable instruments, including instruments endorsed by the principal, into the account.

A person establishing an account under this section shall sign a statement containing language substantially similar to the following in a conspicuous manner:

'SAVINGS BANK (or name of institution) PERSONAL AGENCY ACCOUNT

G.S. 54C-167

I understand that, by establishing a personal agency account under G.S. 54C-167, the agent named in the account may:

1. Sign checks drawn on the account; and
2. Make deposits into the account.

I also understand that upon my death the money remaining in the account will be controlled by my will or inherited by my heirs.

.....
(b) An account created under this section grants no ownership right or interest in the agent. Upon the death of the principal there is no right of survivorship to the account and the authority set out in subsection (a) of this section terminates.

(c) The written contract referred to in subsection (a) of this section shall provide that the principal may elect to extend the authority of the agent to act on behalf of the principal in regard to the account notwithstanding the subsequent incapacity or mental incompetence of the principal. If the principal so elects to extend the authority of the

agent, then upon the subsequent incapacity or mental incompetence of the principal, the agent may continue to exercise the authority, without the requirement of bond or of accounting to any court, until the agent receives actual knowledge that the authority has been terminated by a duly qualified guardian of the estate of the incapacitated or incompetent principal, or by the duly appointed attorney-in-fact for the incapacitated or incompetent principal, acting under a durable power of attorney, as defined in G.S. 32A-8, which grants to the attorney-in-fact that authority in regard to the account which is granted to the agent by the written contract executed under this section, at which time the agent shall account to the guardian or attorney-in-fact for all actions of the agent in regard to the account during the incapacity or incompetence of the principal. If the principal does not so elect to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the authority of the agent terminates.

(d) When an account under this section has been established, all or part of the account or any interest or dividend thereon may be paid by the savings bank on a check made, signed, or executed by the agent. In the absence of actual knowledge that the principal has died or that the agency created by the account has been terminated, the payment is a valid and sufficient discharge to the savings bank for payment so made.

"§ 54C-168. Collection of processing fee for returned checks.

Notwithstanding any other law, a savings bank may charge and collect a processing fee for checks on which payment has been refused by the payor depository institution. A savings bank may also collect a processing fee for checks drawn on that savings bank with respect to an account with insufficient funds.

"§ 54C-169. Right of setoff on deposit accounts.

(a) A savings bank shall have a right of setoff, without further agreement or pledge, upon all deposit accounts owned by any member or customer to whom or upon whose behalf the savings bank has made an unsecured advance of money by loan. Upon default in the repayment or satisfaction thereof, the savings bank may cancel on its books all or any part of the deposit accounts owned by the member or customer, and apply the value of the accounts in payment of the obligation.

(b) A savings bank that exercises the right of setoff provided in this section shall first give 30 days' notice to the member or customer that the right will be exercised. The accounts may be held or frozen, with no withdrawals permitted, during the 30-day notice period. The accounts may not be canceled and the value of the accounts may not be applied to pay the obligation until the 30-day period has expired

without the member or customer having cured the default on the obligation. The amount of any member's or customer's interest in a joint account or other account held in the names of more than one person is subject to the right of setoff provided in this section.

(c) This section is not exclusive, but shall be in addition to contract, common law, and other rights of setoff. Any other rights are not governed in any fashion by this section.

" § 54C-170. Minors as deposit account holders.

(a) A savings bank may issue a deposit account to a minor as the sole and absolute owner and receive payments, pay withdrawals, accept pledges and act, or as a joint owner, in any other manner with respect to the account on the order of the minor with like effect as if the minor were of full age and legal capacity. Any payment to a minor is a discharge of the savings bank to the extent thereof. The account shall be held for the exclusive right and benefit of the minor, and any joint owners, free from the control of all persons, except creditors.

(b) A savings bank may lease a safe deposit box to a minor and, with respect to the lease, may deal with the minor in all regards as if the minor were of full age and legal capacity. A minor entering a lease agreement with a savings bank under this subsection is bound by the terms of the agreement to the same extent as if the minor were of full age and legal capacity.

" § 54C-171. Deposit accounts as deposit of securities.

Notwithstanding any restrictions or limitations contained in any law of this State, the deposit accounts of any State savings bank may be accepted by any agency, department, or official of this State in any case wherein the agency, department, or official acting in its official capacity requires that securities be deposited with the agency, department, or official.

" § 54C-172. New account books.

A new account book or certificate or other evidence of ownership of a deposit account may be issued in the name of the holder of record at any time, when requested by the holder or the holder's legal representative, upon proof satisfactory to the savings bank that the original account book or certificate has been lost or destroyed. The new account book or certificate shall expressly state that it is issued in lieu of the one lost or destroyed and that the savings bank shall in no way be liable thereafter on account of the original book or certificate. The savings bank may, in its bylaws, require indemnification against any loss that might result from the issuance of the new account book or certified certificate.

" § 54C-173. Transfer of deposit accounts.

The owner of a deposit account may transfer the owner's rights therein absolutely or conditionally to any other person eligible to hold the same, but the transfer may be made on the books of the savings bank only upon presentation of evidence of transfer satisfactory to the savings bank, and accompanied by the proper application for transfer by the transferor and transferee, who shall accept the account subject to the terms and conditions of the account contract, the bylaws of the savings bank, the certificate of incorporation of the savings bank, and all rules of the Administrator. Notwithstanding the effectiveness of a transfer between the parties, the savings bank may treat the holder of record of a deposit account as the owner of the deposit account for all purposes, including payment and voting, in the case of a mutual savings bank, until the savings bank records the transfer and assignment.

" § 54C-174. Authority of power of attorney.

A savings bank may continue to recognize the authority of an individual holding a power of attorney in writing to manage or to make withdrawals, either in whole or in part, from the deposit account of a customer or member until the savings bank receives written or actual notice of death or of adjudication of incompetency of the member or revocation of the authority of the individual holding the power of attorney. Payment by the savings bank to an individual holding a power of attorney before receipt of the notice is a total discharge of the savings bank's obligation as to the amount so paid.

" § 54C-175. Holidays.

(a) Each State and federal savings bank, including every branch or office thereof, domiciled in North Carolina shall observe the following as legal holidays and shall not open for the transaction of business with the public on those days:

- (1) New Year's Day, January 1;
- (2) Monday, January 2, when January 1, New Year's Day, falls on Sunday;
- (3) Monday, January 3, when January 1, New Year's Day, falls on a Saturday;
- (4) President's Day, the third Monday in February;
- (5) Good Friday;
- (6) Memorial Day, the last Monday in May;
- (7) Independence Day, July 4;
- (8) Monday, July 5, when July 4, Independence Day, falls on a Sunday;
- (9) Friday, July 3, when July 4, Independence Day, falls on a Saturday;
- (10) Labor Day, the first Monday in September;
- (11) Thanksgiving Day, the fourth Thursday in November;

- (12) Christmas Day, December 25;
- (13) Monday, December 26, when December 25, Christmas Day, falls on a Sunday;
- (14) Monday, December 27, when December 25, Christmas Day, falls on a Saturday.

(b) A savings bank may, in addition to the holidays listed in subsection (a) of this section, observe as a holiday any other day designated as a holiday by the savings bank's board of directors.

"§ 54C-176. Power to borrow money.

A savings bank, in its certificate of incorporation or in its bylaws, may authorize the board of directors to borrow money, and the board of directors may, by resolution adopted by a vote of at least two-thirds of the entire board duly recorded in the minutes, authorize the officers of the savings bank to borrow money for the savings bank on any terms and conditions as the board may deem proper.

"§ 54C-177. Authority to join federal reserve bank.

A State savings bank may subscribe to the capital stock and become a member of a federal reserve bank. A savings bank shall continue to be subject to the supervision and examination required by the laws of this State, except that the Federal Reserve Board shall have the right, if it deems necessary, to make examinations; and the Administrator may disclose to the Federal Reserve Board, or to the examiners duly appointed by it, all information in reference to the affairs of a savings bank that has become, or desires to become, a member of a federal reserve bank.

"§ 54C-178. Regional reciprocal acquisitions.

State savings banks and holding companies thereof shall have the same powers to acquire and be acquired as State associations and their savings and loan holding companies under Article 3A of Chapter 54B of the General Statutes. For this purpose, the term 'association' as used in Article 3A of Chapter 54B of the General Statutes shall include a State savings bank chartered under this Chapter, and the term 'savings and loan holding company' shall include holding companies of State savings banks chartered under this Chapter.

"§§ 54C-179 to 54C-194: Reserved for further codification purposes.

"ARTICLE 9.

"Holding Companies.

"§ 54C-195. Holding companies.

(a) Notwithstanding any other law, a stock savings bank may, simultaneously with its incorporation or conversion to a stock savings bank, provide for its ownership by a holding company. In the case of a conversion, members of the converting savings bank shall have the right to purchase capital stock of the holding company in lieu of

capital stock of the converted savings bank in accordance with G.S. 54C-33(c)(6).

(b) Notwithstanding any other law, a stock savings bank may reorganize its ownership, to provide for ownership by a holding company, upon adoption of a plan of reorganization by a favorable vote of not less than two-thirds of the members of the board of directors of the savings bank and approval of the plan of reorganization by the holders of not less than a majority of the issued and outstanding shares of stock of the savings bank. The plan of reorganization shall provide that (i) the resulting ownership is vested in a North Carolina corporation, (ii) all stockholders of the stock savings bank have the right to exchange shares, (iii) the exchange of stock is not subject to State or federal income taxation, (iv) stockholders not wishing to exchange shares are entitled to dissenters' rights as provided under G.S. 55-113, and (v) the plan of reorganization is fair and equitable to all stockholders.

(c) Notwithstanding any other law, a mutual savings bank may reorganize its ownership to provide for ownership by a holding company upon adoption of a plan of reorganization by favorable vote of not less than two-thirds of the members of the board of directors of the savings bank and approval of the plan of reorganization by a majority of the voting members of the savings bank. The plan of reorganization shall provide that (i) the resulting ownership is vested in a North Carolina corporation, (ii) the resulting ownership of one or more subsidiary savings banks is evidenced by stock shares, (iii) the substantial portion of the assets and all of the insured deposits and part or all of the other liabilities are transferred to one or more subsidiary savings banks, (iv) the reorganization is not subject to State or federal income taxation, and (v) the plan of reorganization is fair and equitable to all members of the savings bank.

(d) A holding company may invest in any investment authorized by its board of directors, except as limited by regulations adopted by the Administrator under this Article.

(e) An entity that controls a stock savings bank, or acquires control of a stock savings bank, is a holding company.

" § 54C-196. Supervision of holding companies.

Holding companies are under the supervision of the Administrator. The Administrator shall exercise all powers and responsibilities with respect to holding companies which the Administrator exercises with respect to savings banks.

" §§ 54C-197 to 54C-210: Reserved for future codification purposes."

Sec. 2. G.S. 54B-4(b)(44a) is repealed.

Sec. 3. G.S. 54B-26 is repealed.

Sec. 4. G.S. 53-127(a) reads as rewritten:

"(a) Definitions. The following definitions apply in this section.

- (1) Banking. The business of receiving or soliciting money on deposit.
- (2) Banking entity. A person, partnership, corporation, or other entity that is engaged in the banking or trust business in North Carolina and is (i) subject to the supervision of the Commissioner of Banks under this Chapter, (ii) subject to supervision by the Administrator of Savings Institutions under Chapter 54B or Chapter 54C, or (iii) a banking or savings institution authorized to transact a banking or trust business in this State under federal law.
- (3) Nonbanking entity. A person, partnership, corporation, or other entity that is not a banking entity."

Sec. 5. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

S.B. 342

CHAPTER 681

AN ACT TO AMEND AND IMPROVE THE INSURANCE LAWS ON THE MONITORING OF THE FINANCIAL CONDITION OF INSURANCE COMPANIES IN ACCORDANCE WITH THE FINANCIAL REGULATION STANDARDS AND INSURANCE DEPARTMENT ACCREDITATION PROGRAM OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-2-25 reads as rewritten:

" § 58-2-25. *Other deputies, actuaries, examiners and employees.*

(a) The Commissioner shall appoint or employ such other deputies, actuaries, economists, financial analysts, financial examiners, licensed attorneys, rate and policy analysts, accountants, fire and rescue training instructors, market conduct analysts, insurance complaint analysts, investigators, engineers, building inspectors, risk managers, clerks and other employees ~~as may be found that the Commissioner considers to be necessary for the proper execution of the work of the Department, at such the compensation as shall be that is fixed and provided by the Department of Administration. If the Commissioner finds it considers it to be necessary for the proper execution of the work of the Insurance Department to contract with persons, except to fill authorized employee positions, all of those contracts, except those provided for in Articles 36 and 37 of this Chapter, shall be made~~

pursuant to the provisions of Article 3C of Chapter ~~143~~, 143 of the General Statutes.

Whenever the Commissioner or any deputy or employee of the Department is requested or subpoenaed to testify as an expert witness in any civil or administrative action, the party making the request or filing the subpoena and on whose behalf the testimony is given shall, upon receiving a statement of the cost from the Commissioner, reimburse the Department for the actual time and expenses incurred by the Department in connection with the testimony.

(b) The minimum education requirements for financial analysts and examiners referred to in subsection (a) of this section are a bachelors degree, with the appropriate courses in accounting as defined in 21 NCAC 8A.0309, and other courses that are required to qualify the applicant as a candidate for the uniform certified public accountant examination, based on the examination requirements in effect at the time of employment by the Department of the analyst or examiner."

Sec. 2. Article 2 of Chapter 58 of the General Statutes is amended by adding the following new sections:

"§ 58-2-131. Examinations to be made; authority, scope, scheduling, and conduct of examinations.

(a) This section and G.S. 58-2-132 and G.S. 58-2-133 shall be known and may be cited as the Examination Law. The purpose of the Examination Law is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this State and all persons otherwise subject to the Commissioner's jurisdiction; and to enable the Commissioner to use a flexible system of examinations that directs resources that are appropriate and necessary for the administration of the insurance statutes and rules of this State.

(b) As used in this section, G.S. 58-2-132 and G.S. 58-2-133, unless the context clearly indicates otherwise:

- (1) 'Commissioner' includes an authorized representative or designee of the Commissioner.
- (2) 'Examination' means an examination conducted under the Examination Law.
- (3) 'Examiner' means any person authorized by the Commissioner to conduct an examination.
- (4) 'Insurance regulator' means the official or agency of another jurisdiction that is responsible for the regulation of a foreign or alien insurer.
- (5) 'Person' includes a trust or any affiliate of a person.

(c) Before licensing any person to write insurance in this State, the Commissioner shall be satisfied, by such examination and evidence as the Commissioner decides to make and require, that the person is

otherwise duly qualified under the laws of this State to transact business in this State.

(d) The Commissioner may conduct an examination of any insurer whenever the Commissioner deems it to be prudent for the protection of policyholders but shall at a minimum conduct an examination of every domestic insurer not less frequently than once every three years. In scheduling and determining the nature, scope, and frequency of examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC Examiners' Handbook.

(e) To complete an examination of any insurer, the Commissioner may authorize an examination or investigation of any person, or the business of any person, insofar as the examination or investigation is necessary or material to the insurer under examination.

(f) Instead of examining any foreign or alien insurer licensed in this State, the Commissioner may accept an examination report on that insurer prepared by the insurer's insurance regulator until January 1, 1994. Thereafter, reports may only be accepted if (i) the insurance regulator was at the time of the examination accredited under NAIC Financial Regulation Standards and Accreditation Program, or (ii) the examination is performed under the supervision of an NAIC-accredited insurance regulator or with the participation of one or more examiners who are employed by the regulator and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by the regulator.

(g) If it appears that the insurer is of good financial and business standing and is solvent, and it is certified in writing and attested by the seal, if any, of the insurer's insurance regulator that it has been examined by the regulator in the manner prescribed by its laws, and was by the examination found to be in sound condition, that there is no reason to doubt its solvency, and that it is still permitted under the laws of such jurisdiction to do business therein, then, in the Commissioner's discretion, further examination may be dispensed with, and the obtained information and the furnished certificate may be accepted as sufficient evidence of the solvency of the insurer.

(h) Upon determining that an examination should be conducted, the Commissioner shall issue a notice of examination appointing one or more examiners to perform the examination and instructing them about the scope of the examination. In conducting the examination, an examiner shall observe the guidelines and procedures in the NAIC Examiners' Handbook. The Commissioner may also use such other

guidelines or procedures as the Commissioner deems to be appropriate.

(i) Every person from whom information is sought and its officers, directors, and agents must provide to the Commissioner timely, convenient, and free access, at all reasonable hours at its offices, to all data relating to the property, assets, business, and affairs of the insurer being examined. The officers, directors, employees, and agents of the person must facilitate and aid in the examination. The refusal of any insurer, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the Commissioner or to knowingly or willfully make any false statement in regard to the examination or written request, is grounds for revocation, suspension, refusal, or nonrenewal of any license or authority held by the insurer to engage in an insurance or other business subject to the Commissioner's jurisdiction.

(j) The Commissioner may issue subpoenas, administer oaths, and examine under oath any person about any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the Commissioner may petition the Superior Court of Wake County, and upon proper showing the Court may enter any order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the Court order is punishable as contempt of court.

(k) When making an examination, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the insurer that is the subject of the examination.

(l) Pending, during, and after the examination of any insurer the Commissioner shall not make public the financial statement, findings, or examination report, or any report affecting the status or standing of the insurer examined, until the insurer has either accepted and approved the final examination report or has been given a reasonable opportunity to be heard on the report and to answer or rebut any statements or findings in the report. The hearing, if requested, shall be informal and private.

(m) Nothing in the Examination Law limits the Commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action under the laws and rules of this State and to use any final or preliminary examination report, any examiner or insurer work papers or other documents, or any other information discovered or developed during any examination in the furtherance of any legal or regulatory action that the Commissioner may consider to be appropriate. Findings of fact and conclusions made pursuant to

any examination are *prima facie* evidence in any legal or regulator action.

" § 58-2-132. *Examination reports.*

(a) All examination reports shall comprise only facts appearing upon the books, records, or other documents of the insurer, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and conclusions and recommendations that the examiners find reasonably warranted from the facts.

(b) No later than 60 days following completion of an examination, the examiners shall file with the Department a verified written examination report under oath. Upon receipt of the verified report, the Department shall send the report to the insurer examined, together with a notice that affords the insurer examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report. Within 30 days of the date of the examination report, the insurer shall file affidavits executed by each of its directors stating under oath that they have received and read a copy of the report.

(c) At the end of the 30 days provided for the receipt of written submissions or rebuttals, the Commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant parts of the examiners' work papers and enter an order:

- (1) Adopting the examination report as filed or with modifications or corrections. If the examination report reveals that the insurer is operating in violation of any law, rule, or prior order of the Commissioner, the Commissioner may order the insurer to take any action the Commissioner considers necessary and appropriate to cure the violation; or
- (2) Rejecting the examination report with directions to the examiners to reopen the examination to obtain additional data, documentation of the information, and refile under subdivision (1) of this subsection; or
- (3) Calling for an investigatory hearing with no less than 20 days' notice to the insurer for purposes of obtaining additional documentation, data, and testimony.

(d) All orders entered under subdivision (c)(1) of this section shall be accompanied by findings and conclusions resulting from the Commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order shall be considered a final administration decision and shall be served upon the insurer by certified mail. Any hearing conducted under subdivision (c)(3) of this section shall be

conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent on the face of the filed examination report or raised by or as a result of the Commissioner's review of relevant work papers or by the written submission or rebuttal of the insurer. Within 20 days after the conclusion of any such hearing, the Commissioner shall enter an order under subdivision (c)(1) of this section. The Commissioner may not appoint a member of the Department's examination staff as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the insurer limited to the examiner's work papers that tend to substantiate any assertions set forth in any written submission or rebuttal. The Commissioner may issue subpoenas for the attendance of any witnesses or the production of any documents the Commissioner considers to be relevant to the investigation, whether they are under the control of the Department, the insurer, or other persons. The documents produced shall be included in the record, and testimony taken by the Commissioner shall be under oath and preserved for the record. Nothing in this section requires the Department to disclose any information or records that would show the existence or content of any investigation or activity of any federal or state criminal justice agency. In the hearing, the Commissioner shall question the persons subpoenaed. Thereafter the insurer and the Department may present testimony relevant to the investigation. Cross-examination shall be conducted only by the Commissioner. The insurer and the Department may make closing statements and may be represented by counsel of their choice.

(e) Upon completion of the examination report under subdivision (c)(1) of this section, the Commissioner shall hold the content of the examination report as private and confidential information for the 30-day period provided for written submissions or rebuttals. If after 30 days after the examination report has been submitted to it, the insurer examined has neither notified the Commissioner of its acceptance and approval of the report nor requested to be heard on the report, the report shall then be filed as a public document and shall be open to public inspection, as long as no court of competent jurisdiction has stayed its publication. Nothing in the Examination Law prohibits the Commissioner from disclosing the content of the examination report, preliminary examination report or results, or any related matter, to an insurance regulator or to law enforcement officials of this or any other state or country or of the United States government at any time, as long as the person or agency receiving the report or related matters agrees in writing and is authorized by law to hold it confidential and in a manner consistent with this section. If the Commissioner

determines that further regulatory action is appropriate as a result of any examination, the Commissioner may initiate such proceedings or actions as provided by law.

(f) All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person during an examination shall be given confidential treatment and is not subject to subpoena and may not be made public by the Commissioner or any other person, except to the extent provided in G.S. 58-2-131(l) or subsection (e) of this section. Access may also be granted to the NAIC. Such parties must agree in writing before receiving the information to give it the same confidential treatment as this section requires, unless the prior written consent of the insurer to which it pertains has been obtained. The provisions of this section do not prohibit the Commissioner from taking any action provided for, or from exercising any power conferred by, any provision of this Chapter to suspend or revoke the license of any insurer.

"§ 58-2-133. Conflict of interest; cost of examinations; immunity from liability.

(a) No person may be appointed as an examiner by the Commissioner if that person, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination. This section does not preclude an examiner from being:

- (1) A policyholder or claimant under an insurance policy;
- (2) A grantor of a mortgage or similar instrument on the examiner's residence to an insurer if done under customary terms and in the ordinary course of business;
- (3) An investment owner in shares of regulated diversified investment companies; or
- (4) A settler or beneficiary of a blind trust into which any otherwise nonpermissible holdings have been placed.

(b) Notwithstanding the requirements of G.S. 58-2-131, the Commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though they may from time to time be similarly employed or retained by persons subject to examination under the Examination Law.

(c) Any insurer examined shall pay the proper charges incurred in the examination, including the expenses and compensation of the Commissioner. The charges and expenses shall be reasonable as determined by the Commissioner and in accordance with guidelines established by the NAIC set forth in the NAIC Examiners' Handbook. The refusal of any insurer to submit to examination, or the refusal or

failure of any insurer to pay the expenses of examination upon presentation by the Commissioner of a bill for those expenses, is grounds for the revocation, suspension, or refusal of a license. The Commissioner may make public any such revocation, suspension, or refusal of license and may give reasons for that action. The Commissioner shall promptly begin a civil action to recover the expenses of examination against any insurer that refuses or fails to pay.

(d) The provisions of G.S. 58-2-160 apply to examinations conducted under the Examination Law."

Sec. 3. G.S. 58-2-130, 58-2-135, and 58-2-140 are repealed.

Sec. 4. G.S. 58-2-145 reads as rewritten:

" § 58-2-145. Examination, financial statement, and records of employers self-insuring for workers' compensation.

The provisions of G.S. 58-2-130, 58-2-140, 58-2-131 through G.S. 58-2-133, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, and 58-6-5 apply to employers that furnish proof of financial responsibility to the Commissioner under G.S. 97-93(a)(2) and to persons that administer workers' compensation self-insurance for such those employers."

Sec. 5. G.S. 58-20-30 reads as rewritten:

" § 58-20-30. Financial monitoring and evaluation of clubs.

Each club shall be audited annually, at the Club's expense, by a certified public accounting firm. A copy of the audit report shall be furnished to each member, and to the Commissioner. The trustees shall obtain an appropriate actuarial evaluation of the loss and loss adjustment expenses reserves of the Club, including estimate of losses and loss adjustment expenses incurred but not reported. The provisions of G.S. 58-2-130 (examination of companies by the Commissioner before authority to transact business granted), G.S. 58-2-131 through G.S. 58-2-133, G.S. 58-2-150 (affidavit of compliance with law required), G.S. 58-2-150, G.S. 58-2-160 (immunity from liability for reporting insurance fraud), 58-2-160, G.S. 58-2-165 (annual, semiannual, or quarterly statements filed with the Commissioner), 58-2-165, G.S. 58-2-180 (punishment for false statement), 58-2-180, G.S. 58-2-185 (making and keeping business records for the Commissioner's inspection), 58-2-185, G.S. 58-2-190 (Commissioner's authority to require special reports), 58-2-190, G.S. 58-2-200 (exhibition of books, accounts and other papers to the Commissioner), 58-2-200, and G.S. 58-6-5 (Commissioner authorized to collect and pay fees and charges for examination to State Treasury) shall apply to each Club and to persons that administer the Clubs."

Sec. 6. G.S. 58-23-25 reads as rewritten:

" § 58-23-25. Financial monitoring and evaluation of pools.

Each pool must be audited annually at the expense of the pool by a certified public accounting firm, with a copy of the report available to the governing body or chief executive officer of each member of the pool and to the Commissioner. The board of trustees of the pool must obtain an appropriate actuarial evaluation of the loss and loss adjustment expense reserves of the pool, including an estimate of losses and loss adjustment expenses incurred but not reported. The provisions of G.S. ~~58-2-130, 58-2-131 through G.S. 58-2-133, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200,~~ and 58-6-5 apply to each pool and to persons that administer pools for local governments. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year."

Sec. 7. G.S. 58-2-165 reads as rewritten:

"§ 58-2-165. Annual, semiannual, ~~or monthly, or quarterly~~ statements to be filed with Commissioner.

(a) Every insurance company shall file in the Commissioner's office, ~~office of the Commissioner of Insurance,~~ on or before the first day of March 1 in of each year, in form and detail as the ~~Commissioner of Insurance prescribes,~~ a statement showing the business standing and financial condition of such the company, association, or order on the preceding ~~thirty-first day of December,~~ December 31, signed and sworn to by the chief managing agent or officer thereof, before the Commissioner ~~of Insurance~~ or some officer authorized by law to administer oaths. ~~The Commissioner of Insurance shall, in December of each year, furnish to each of the insurance companies authorized to do business in the State two or more blanks adapted for their annual statements.~~ Provided, the Commissioner may, for good and sufficient cause shown by an applicant company, extend the filing date of such the company's annual ~~statement for such company,~~ statement, for a reasonable period of time, not to exceed 30 days. ~~Provided further, However, the Commissioner may, in his discretion, may require the statement required by this section to be filed semiannually or quarterly by any insurance company, association, or order.~~ order to file its statement semiannually or quarterly.

(b) The Commissioner may require statements under this section, G.S. 58-2-170, G.S. 58-2-175, and G.S. 58-2-190 to be filed in a format that can be read by electronic data processing equipment; and may require such those readable statements to be filed on a monthly basis.

(c) All statements filed under this section must be prepared in accordance with the NAIC Annual Statement Instructions Handbook and pursuant to the NAIC Accounting Practices and Procedures

Manual unless further modified by the Commissioner as the Commissioner considers to be appropriate."

Sec. 8. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-2-225. Regulation of reinsurance intermediaries."

(a) As used in this section, 'reinsurance intermediary' means any person that acts as a broker in soliciting, negotiating, or procuring the making of any reinsurance contract or binder on behalf of a ceding insurer; or acts as a broker in accepting any reinsurance contract or binder on behalf of an assuming insurer.

(b) The Commissioner may adopt rules to provide for the regulation of reinsurance intermediaries. Those rules may be based on the NAIC model act that provides for: licensure, required contract provisions, maintenance and production of books and records, duties of insurers and reinsurers, prohibited acts, examination authority, and penalties and liabilities."

Sec. 9. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-155. Business transacted with insurer-controlled brokers."

(a) As used in this section:

(1) 'Broker' means a person who, being a licensed agent, obtains insurance for another party through a duly authorized agent of an insurer that is licensed to do business in this State but for which the broker is not authorized to act as agent.

(2) 'Control' or 'controlled' means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or a corporate office held by the person. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person.

(b) The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support that determination, that control exists in fact, notwithstanding the absence of a presumption to that effect. The Commissioner may determine upon application that any person does not or will not upon the taking of some proposed action control another person. The Commissioner may prospectively revoke or modify that determination, after notice and opportunity to be heard

whenever in the Commissioner's judgment revocation or modification is consistent with this section.

(c) No licensed property or casualty insurer that has control of a broker may accept insurance from the broker in any transaction in which the broker, when the insurance is placed, is acting as such on behalf of the insured for any compensation, commission, or thing of value unless the broker, before the effective date of the coverage, delivers written notice to the prospective insured disclosing the relationship between the insurer and broker. The disclosure must be signed by the insured and must be retained in the insurer's underwriting file until the completion and release of the examination report under G.S. 58-2-131, 58-2-132, and 58-2-133 for the period in which the coverage is in effect. If the insurance is placed through a subbroker that is not a controlled broker, the controlling insurer shall retain in its records a signed commitment from the subbroker that the subbroker is aware of the relationship between the insurer and the broker and that the subbroker has notified or will notify the insured.

(d) This section does not affect the rights of policyholders, claimants, creditors, or other third parties."

Sec. 10. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-160. Sale of company or major reorganization; license to be restricted.

The Commissioner shall restrict the license by prohibiting new or renewal insurance business transacted in this State by any licensed insurer that, in anticipation of a sale of the insurer to new owners or a major reorganization of the business or management of the insurer, transfers all of its existing insurance business to another insurer through an assumption reinsurance agreement or does not write any new insurance business for over one year. The restriction shall remain in force until after the insurer has filed the following information with the Commissioner and the Commissioner has granted approval:

- (1) Biographical information in a form acceptable to the Commissioner for each new owner, director, or management person;
- (2) A detailed and complete plan of operation describing the kinds of insurance to be written and the method in which the reorganized insurer will perform its various functions;
- (3) Financial projections of the anticipated operational results of the reorganized insurer for the succeeding three years based on the capitalization of the reorganized insurer and its plan of operation, which must be prepared by a properly qualified individual, be in sufficient detail for a complete analysis to

be performed, and be accompanied by a list of the assumptions used in making the projections; and

- (4) Any other information the Commissioner considers to be pertinent for a proper analysis of the reorganized insurer."

Sec. 11. G.S. 58-4-5 reads as rewritten:

" § 58-4-5. *Filing requirements.*

(a) Each domestic, foreign, and alien insurer that is authorized to transact insurance in this State ~~shall, on or before March 1 of each year, shall file with the National Association of Insurance Commissioners (NAIC) NAIC a copy of its annual statement convention blank, along with such additional filings as prescribed by the Commissioner, for the preceding year,~~ financial statements required by G.S. 58-2-165, applicable rules, and legal directives and bulletins issued by the Department. The statements shall, in the Commissioner's discretion, be filed annually, semiannually, or quarterly, and shall be filed in a form or format prescribed or permitted by the Commissioner. The Commissioner may require the statements to be filed in a format that can be read by electronic data processing equipment. The information filed with the NAIC shall be in the same format and scope as that required by the Commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addenda to the annual statement filing financial statement that are subsequently filed with the Commissioner shall also be filed with the NAIC."

Sec. 12. G.S. 58-4-15 reads as rewritten:

" § 58-4-15. *Revocation of certificate of authority.*

The Commissioner may suspend, revoke, or refuse to renew the certificate of authority of any insurer failing to file its annual statement financial statement when due or within any extension of time that the Commissioner, for good cause, may have granted."

Sec. 13. Article 4 of Chapter 58 of the General Statutes is amended by adding a new section to read:

" § 58-4-25. *Insurance Regulatory Information System and similar program test data records.*

Financial test ratios, data, or information generated by the NAIC Insurance Regulatory Information System, any successor program, or any similar program shall be disseminated by the Commissioner consistent with procedures established by the NAIC."

Sec. 14. G.S. 58-2-220 reads as rewritten:

" § 58-2-220. *Insurance Regulatory Information System and similar program test data not public records.*

Financial Except as provided in G.S. 58-4-25, financial test ratios ratios, data, or information and other data received or generated by the Commissioner pursuant to the NAIC Insurance Regulatory

Information System, any successor program, or any similar program developed by the Commissioner, are not public records and are not subject to Chapter 132 of the General Statutes or G.S. 58-2-100."

Sec. 15. G.S. 58-5-5 reads as rewritten:

"§ 58-5-5. *Amount of deposits required of foreign or alien fire and/or marine insurance companies.*

Unless otherwise provided in this Article, every fire, marine, or fire and marine insurance company chartered by any other state or foreign government shall make and maintain deposits of securities with the Commissioner in the ~~following amounts~~; amount of twenty-five thousand dollars (\$25,000) market value.

- ~~(1) Companies whose premium income derived from this State is less than fifty thousand dollars (\$50,000) per annum, ten thousand dollars (\$10,000);~~
- ~~(2) Companies whose premium income is more than fifty thousand dollars (\$50,000) but less than one hundred thousand dollars (\$100,000) per annum, twenty thousand dollars (\$20,000);~~
- ~~(3) Companies whose premium income is more than one hundred thousand dollars (\$100,000) per annum, twenty-five thousand dollars (\$25,000);~~

~~for which deposit the Commissioner shall give a receipt."~~

Sec. 16. G.S. 58-5-10 reads as rewritten:

"§ 58-5-10. *Amount of deposits required of foreign or alien fidelity, surety and casualty insurance companies.*

Unless otherwise provided in this ~~Article~~ Article, every fidelity, surety or casualty insurance company chartered by any other state or foreign government shall make and maintain deposits of securities with the Commissioner in the ~~following amounts~~; amount of fifty thousand dollars (\$50,000) market value.

- ~~(1) Companies whose premium income derived from this State is less than one hundred thousand dollars (\$100,000), twenty-five thousand dollars (\$25,000);~~
- ~~(2) Companies whose premium income is in excess of one hundred thousand dollars (\$100,000), fifty thousand dollars (\$50,000);~~

~~for which deposit the Commissioner shall give a receipt."~~

Sec. 17. G.S. 58-5-15 reads as rewritten:

"§ 58-5-15. *Minimum deposit required upon admission.*

Upon admission to do business in the State of North Carolina every foreign or alien fire, marine, or fire and marine, fidelity, surety or casualty company shall deposit with the Commissioner securities in the ~~minimum~~ amounts required under ~~the provisions of~~ G.S. 58-5-5 and 58-5-10."

Sec. 18. G.S. 58-5-20 reads as rewritten:

" § 58-5-20. Type of deposits.

The deposits required to be made under ~~the provisions of~~ G.S. 58-5-5, 58-5-10, and 58-5-50 shall be composed of of:

- (a) Interest-bearing bonds of the United States, States of America;
- (b) Interest-bearing bonds of the State of North Carolina, or of the its cities or ~~counties of this State,~~ counties; or
- (c) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina."

Sec. 19. G.S. 58-5-40 reads as rewritten:

" § 58-5-40. Authority to increase deposit.

When, ~~in the opinion of the Commissioner,~~ Commissioner's opinion, it is necessary for the protection of the public interest to increase the amount of deposits specified in G.S. 58-5-5, 58-5-10, ~~and 58-5-50,~~ and 58-5-55, the companies described in ~~said those~~ sections shall, upon demand, make additional deposits in such sums as the Commissioner may require, and ~~such those~~ those additional deposits shall be held in accordance with and for the purposes set out in this ~~Article,~~ Article, and shall comprise:

- (a) Interest-bearing bonds of the United States of America;
- (b) Interest-bearing bonds of the State of North Carolina or of its cities or counties;
- (c) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina;
- (d) Interest-bearing AA or better rated corporate bonds and classified as investment grade in the latest NAIC Securities Valuation Manual; or
- (e) Other interest-bearing bonds or notes considered to be acceptable by the Commissioner on a case by case basis."

Sec. 20. G.S. 58-5-55(c) reads as rewritten:

~~"(c) Domestic insurance companies that are licensed on or before June 28, 1989, shall have one year from that date to comply with this section.~~ Deposits fulfilling the requirements of this section shall comprise:

- (1) Interest-bearing bonds of the United States of America;
- (2) Interest-bearing bonds of the State of North Carolina or of its cities or counties; or
- (3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina."

Sec. 21. G.S. 58-5-45, 58-5-85, and 58-5-125 are repealed.

Sec. 22. Article 7 of Chapter 58 of the General Statutes is amended by adding the following new sections:

" § 58-7-21. Credit allowed a domestic ceding insurer.

(a) As used in this section and in G.S. 58-7-26, 58-7-30, and 58-7-32:

- (1) 'Reinsurance' means a transfer of insurance risk from a ceding insurer to an assuming insurer.
- (2) 'Insurance risk' means an uncertainty regarding the ultimate amount of any claim payment (underwriting risk) or an uncertainty regarding the timing of such payments (timing risk), or both.

(b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivisions (1), (2), (3), (4), or (5) of this subsection. If meeting the requirements of subdivisions (3) or (4) of this subsection, the reinsurer must also meet the requirements of subdivision (6) of this subsection.

- (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this State.
- (2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this State. An accredited reinsurer is one that:
 - a. Files with the Commissioner evidence of its submission to this State's jurisdiction;
 - b. Submits to this State's authority to examine its books and records;
 - c. Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;
 - d. Files annually with the Commissioner a copy of its annual statement filed with the insurance regulator of its state of domicile and a copy of its most recent audited financial statement; and either
 1. Maintains a policyholders' surplus in an amount that is not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the Commissioner within 90 days after its submission; or
 2. Maintains a policyholders' surplus in an amount less than twenty million dollars (\$20,000,000) and whose accreditation has been approved by the Commissioner.

No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has

been revoked by the Commissioner after notice and opportunity for a hearing.

- (3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that uses standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien assuming insurer:
- a. Maintains a policyholders' surplus in an amount not less than twenty million dollars (\$20,000,000); and
 - b. Submits to the authority of this State to examine its books and records.

However, the requirement in sub-subdivision (3)a. of this subsection does not apply to reinsurance ceded and assumed under pooling arrangements among insurers in the same holding company system.

- (4) a. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in G.S. 58-7-26(b), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers to enable the Commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars (\$20,000,000). In the case of a group of individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group; and the group shall make available to the Commissioner an annual certification of the solvency of

- each underwriter by the group's domiciliary regulator and its independent certified public accountants.
- b. In the case of a group of incorporated insurers under common administration which (i) complies with the filing requirements contained in the previous paragraph, (ii) has continuously transacted an insurance business outside the United States for at least three years immediately before making application for accreditation, (iii) submits to this State's authority to examine its books and records and bears the expense of the examination, and (iv) has aggregate policyholders' surplus of ten billion dollars (\$10,000,000,000); the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group under reinsurance contracts issued in the name of the group. In addition, the group shall maintain a joint trusted surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the Commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.
- c. The trust shall be established in a form approved by the Commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Commissioner. The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.
- d. No later than February 28 of each year the trustees of the trust shall report to the Commissioner in writing, setting forth the balance of the trust and listing the trust's investments at the end of the preceding year, and shall certify the date of termination of the trust, if so

planned, or certify that the trust shall not expire before the next following December 31.

- (5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivisions (1), (2), (3), or (4) of this subsection, but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

- (6) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this State, the credit permitted by subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

a. That if the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the ceding insurer's request, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of the court or of any appellate court if there is an appeal; and

b. To designate the Commissioner as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding begun by or on behalf of the ceding company.

This subdivision does not affect the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

- (c) This section applies to all reinsurance cessions made on or after January 1, 1992, under reinsurance agreements that have an inception, anniversary, or renewal date on or after January 1, 1992.

"§ 58-7-26. Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.

(a) A reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of G.S. 58-7-21 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer; and such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United

States financial institution as defined in subsection (c) of this section. This security may be in the form of:

- (1) Cash;
- (2) Securities that are listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets;
- (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in subsection (b) of this section, no later than December 31 of the year for which the filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever occurs first; or
- (4) Any other form of security acceptable to the Commissioner.

(b) For purposes of subdivision (a)(3) of this section, a 'qualified United States financial institution' means an institution that:

- (1) Is organized, or in the case of a United States office of a foreign banking organization licensed, under the laws of the United States or any of its states;
- (2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
- (3) Has been determined by either the Commissioner or the Securities Valuation Office of the NAIC to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

(c) A 'qualified United States financial institution' means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

- (1) Is organized, or in the case of a United States branch or agency office of a foreign banking organization licensed, under the laws of the United States or any of its states and has been granted authority to operate with fiduciary powers; and
- (2) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(d) This section applies to all reinsurance cessions made on or after January 1, 1992, under reinsurance agreements that have an inception, anniversary, or renewal date on or after January 1, 1992."

Sec. 23. G.S. 58-7-20 and G.S. 58-7-25 are repealed.

Sec. 24. G.S. 58-16-5(6) reads as rewritten:

"(6) Satisfies the Commissioner that it is in substantial compliance with the provisions of ~~G.S. 58-7-20 through G.S. 58-7-30~~ G.S. 58-7-21, 58-7-26, 58-7-30, and 58-7-32 and Article 13 of this Chapter."

Sec. 25. Article 7 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-7-32. Life reinsurance agreements."

(a) This section applies to domestic life insurers and other licensed life insurers that are not subject to a substantially similar statute or administrative rule in their domiciliary jurisdictions.

(b) No insurer shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the Commissioner if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

- (1) The primary effect of the reinsurance agreement is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a risk charge and the agreement does not provide for significant participation by the reinsurer in one or more of the following risks: mortality, morbidity, investment, or surrender benefit;
- (2) The reserve credit taken by the ceding insurer is not in compliance with insurance statutes or with rules or actuarial interpretations or standards adopted by the Commissioner;
- (3) The reserve credit taken by the ceding insurer is greater than the underlying reserve of the ceding insurer supporting the policy obligations transferred under the reinsurance agreement;
- (4) The ceding insurer is required to reimburse the reinsurer for negative experience under the ceding insurer of an amount equal to prior years' losses upon voluntary termination of in-force reinsurance by that ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience;
- (5) The ceding insurer can be deprived of surplus at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer; except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums shall not be considered to be such a deprivation of surplus;

- (6) The ceding insurer must, at scheduled times specified or implied in the agreement, terminate or automatically recapture all or part of the coverage ceded;
- (7) No cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements before the termination date of the agreement made only in a reinsurance account, and no funds in the account are available for the payment of benefits; or
- (8) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income reasonably expected from the reinsured policies.

(c) Notwithstanding subsection (b) of this section, an insurer may, with the Commissioner's prior approval, take such reserve credit as the Commissioner considers to be consistent with insurance statutes; or rules, actuarial interpretations, or standards adopted by the Commissioner.

(d) No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the Commissioner, unless the agreement, amendment or a letter of intent has been duly executed in writing by both parties no later than the 'as of date' of the financial statement.

(e) In the case of a letter of intent, a reinsurance agreement, or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding 90 days after the execution date of the letter of intent, for credit to be granted for the reinsurance ceded.

(f) Insurers may continue to reduce liabilities or establish assets in financial statements filed with the Commissioner for reinsurance ceded under types of reinsurance agreements described in subsection (b) of this section, provided:

- (1) The agreements were executed and in force before the effective date of this section;
- (2) No new business is ceded under the agreements after the effective date of this section;
- (3) The reduction of the liability or the asset established for the reinsurance ceded is reduced to zero by December 31, 1992, or a later date approved by the Commissioner as a result of an application made by the ceding insurer before January 1, 1992; and
- (4) The Commissioner is notified, within 90 days after the effective date of this section, of the existence of the reinsurance agreements and all corresponding credits taken in the ceding insurer's 1990 Annual Statement."

Sec. 26. Article 7 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-7-33. Minimum policyholders' surplus to assume property or casualty reinsurance.

(a) Notwithstanding any other provision of law, no domestic property or casualty insurer with less than ten million dollars (\$10,000,000) in policyholders' surplus may, without the Commissioner's prior written approval, assume reinsurance on any risk that it is otherwise permitted to assume except where the reinsurance is:

(1) Required by applicable law or regulation; or

(2) Assumed under pooling arrangement among members of the same holding company system.

(b) This section applies to reinsurance contracts entered into or renewed on or after the effective date of this section.

(c) This section does not invalidate any reinsurance contract that was entered into before the effective date of this section as between the parties to the contract."

Sec. 27. G.S. 58-7-75 is amended by adding a new subdivision to read:

"(11) The Commissioner may require an insurer to have and maintain a larger amount of capital or surplus than prescribed in this section, based upon the volume and kinds of insurance transacted by the insurer and on the principles of risk-based capital as determined by the NAIC or the Commissioner."

Sec. 28. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-165. Business transacted with producer-controlled property or casualty insurers.

(a) As used in this section:

(1) 'Accredited state' means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the NAIC.

(2) 'Captive insurer' means an insurance company that is owned by another organization and whose exclusive purpose is to insure risks of the parent organization and affiliated companies. In the case of groups and associations, 'captive insurer' means an insurance organization that is owned by the insureds, and whose exclusive purpose is to insure risks of member organizations or group members and their affiliates.

- (3) 'Control' and its cognates mean the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person.
- (4) 'Controlled insurer' means an insurer that is controlled, directly or indirectly, by a producer.
- (5) 'Controlling producer' means a producer who, directly or indirectly, controls an insurer.
- (6) 'Insurer' means any person licensed to write property or casualty insurance in this State. 'Insurer' does not mean a risk retention group under Article 22 of this Chapter, residual market mechanism, joint underwriting authority, nor captive insurer.
- (7) 'Producer' means an insurance broker or brokers or any other person, when, for any compensation, commission, or other thing of value, that person acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than that person. 'Producer' does not mean an exclusive agent or any independent agent acting on behalf of a controlled insurer, including any subagent or representative of the agent, who acts as such in the solicitation of, negotiation for, or procurement or making of an insurance contract, if the agent is not also acting in the capacity of an insurance broker in the transaction in question.

(b) The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect. The Commissioner may determine upon application that any person does not or will not upon the taking of some proposed action control another person. The Commissioner may prospectively revoke or modify that determination, after notice and opportunity to be heard, whenever in the Commissioner's judgment revocation or modification is consistent with this section.

(c) This section applies to insurers that are either domiciled in this State or domiciled in a state that is not an accredited state having in

effect a substantially similar law. The provisions of Article 19 of this Chapter, to the extent they are not superseded by this section, apply to all parties within holding company systems subject to this section.

(d) The provisions of this section apply if, in any calendar year, the aggregate amount of gross written premiums on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent (5%) of the admitted assets of the controlled insurer, as reported in the controlled insurer's most recent annual statement or its quarterly statement filed as of September 30 of the prior year. The provisions of this section do not apply if:

- (1) The controlling producer places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with that insurance; and the controlling producer accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and
- (2) The controlled insurer, except for insurance business written through a residual market mechanism, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

(e) A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the producer and the insurer specifying the responsibilities of each party, and unless the contract has been approved by the board of directors of the insurer and contains all of the following minimum provisions:

- (1) The insurer may terminate the contract for cause, upon written notice to the producer. The insurer shall suspend the producer's authority to write business during the pendency of any dispute regarding the cause for the termination.
- (2) The producer shall render accounts to the insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the producer.
- (3) The producer shall remit all funds due under the contract terms to the insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments of premiums collected shall be remitted no later than 90 days

after the effective date of any policy placed with the insurer under this contract.

- (4) The producer shall hold all funds collected for the insurer's account in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the provisions of this Chapter as applicable. Funds of a producer who is not required to be licensed in this State shall be maintained in compliance with the requirements of the producer's domiciliary jurisdiction.
- (5) The producer shall maintain separately identifiable records of business written for the insurer.
- (6) The producer shall not assign the contract in whole or in part.
- (7) The insurer shall provide the producer with its underwriting standards, rules and procedures, the manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the insurer by a producer other than a controlling producer.
- (8) The rates and terms of the producer's commissions, charges, or other fees and the purposes for the charges or fees. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the insurer by producers other than controlling producers. For the purposes of this subdivision and subdivision (7) of this subsection, 'comparable business' includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.
- (9) If the contract provides that the producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then the compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the insurer's reserves on remaining claims has been independently verified under subsection (g) of this section.

(10) A limit on the producer's writings in relation to the insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The insurer shall notify the producer when the applicable limit is approached and shall not accept business from the producer if the limit is reached. The producer shall not place business with the insurer if it has been notified by the insurer that the limit has been reached.

(11) The producer may negotiate but shall not bind reinsurance on behalf of the insurer on business the producer places with the insurer; however, the producer may bind facultative reinsurance contracts under obligatory facultative agreements if the producer's contract with the insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(f) Every controlled insurer shall have an audit committee, consisting of independent directors, of the insurer's board of directors. The audit committee shall meet annually with the insurer's management, the insurer's independent certified public accountants, and an independent casualty actuary or another independent loss reserve specialist acceptable to the Commissioner, to review the adequacy of the insurer's loss reserves.

(g) In addition to any other required loss reserve certification, the controlled insurer shall, on or before April 1 of each year, file with the Commissioner an opinion of an independent casualty actuary or of another independent loss reserve specialist acceptable to the Commissioner, reporting loss ratios for each kind of insurance written and attesting to the adequacy of loss reserves established for losses incurred and outstanding and for incurred but not reported losses as of the end of the prior calendar year on business placed by the producer.

(h) The controlled insurer shall report annually to the Commissioner the amount of commissions paid to the controlling producer, the percentage that amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

(i) The controlling producer, before the effective date of any policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer: However, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the

controlling producer's records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the prospective insured.

(j) If the Commissioner believes that a controlling producer or any other person has not materially complied with this section or with any rule adopted or order issued under this section, after notice and opportunity to be heard, the Commissioner may order the controlling producer to stop placing business with the controlled insurer. If it is found that, because of the material noncompliance, the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage, the Commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

(k) If an order for liquidation or rehabilitation of the controlled insurer has been entered under Article 30 of this Chapter, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this section or any rule adopted or order issued under this section, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(l) In addition to any other remedies provided in this section, whenever the Commissioner believes that a person has not materially complied with this section, the Commissioner may institute a proceeding under G.S. 58-2-60 or under G.S. 58-2-70. In addition to the civil penalty or restitution proceedings provided for in G.S. 58-2-70, the Commissioner may issue a cease and desist order against the person.

(m) This section does not affect the Commissioner's right to impose any other penalties provided for in this Chapter nor the rights of policyholders, claimants, creditors, or other third parties.

(n) Controlled insurers and controlling producers who are not in compliance with subsection (e) of this section on October 1, 1991, have until December 1, 1991, to come into compliance and shall comply with subsection (i) of this section beginning with all policies written or renewed on or after December 1, 1991."

Sec. 29. Article 7 of Chapter 58 of the General Statutes is amended by adding the following new sections to read:

"§ 58-7-160. Investments unlawfully acquired.

Whenever it appears by examination as authorized by law that a domestic insurer has acquired any assets in violation of the law in force on the date of the acquisition, the Commissioner shall disallow the amount of the assets, if wholly ineligible, or the amount of the

value thereof in excess of any limitation prescribed by this Chapter and shall deduct that amount as a nonadmitted asset of the insurer.

"§ 58-7-162. Allowable or admitted assets.

In any determination of the financial condition of an insurer, there shall be allowed as assets only those assets owned by an insurer and that consist of:

- (1) Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent United States bank, savings and loan association, or trust company, and the balance of any such deposit in an insolvent United States bank, savings and loan association, or trust company, to the extent insured by a federal agency.
- (2) Investments, securities, properties, and loans acquired or held in accordance with this Chapter, and in connection therewith the following items:
 - a. Interest due or accrued on any bond or evidence of indebtedness that is not in default.
 - b. Declared and unpaid dividends on stock and shares, unless that amount has otherwise been allowed as an asset.
 - c. Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.
 - d. Interest due or accrued on deposits in solvent banks, savings and loan associations, and trust companies, and interest due or accrued on other assets, if the interest is, in the Commissioner's judgment, a collectible asset.
 - e. Interest due or accrued on a current mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of 90 days be allowed as an asset.
 - f. Rent due or accrued on real property if the rent is not in arrears for more than three months, and rent more than three months in arrears if the payment of the rent is adequately secured by property held in the tenant's name and conveyed to the insurer as collateral and the underlying collateral is admissible under this Chapter.
 - g. The unaccrued portion of taxes paid before the due date on real property.
- (3) Premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an

amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.

- (4) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer.
- (5) Premiums in the course of collection, other than for life insurance, not more than 90 days past due, less commissions payable thereon, except for premiums payable directly or indirectly by the United States government or by any of its instrumentalities.
- (6) All premiums not more than 90 days past due, excluding commissions payable thereon, due from any person that solely or in combination with the person's affiliates owes the insurer an amount that exceeds five percent (5%) of the insurer's total premiums in course of collection, but only if:

 - a. The premiums collected by the person or affiliates and not remitted to the insurer are held in a trust account with a bank or other depository approved by the Commissioner. The funds shall be held as trust funds and may not be commingled with any other funds of the person or affiliates. Disbursements from the trust account may be made only to the insurer, the insured, or, for the purpose of returning premiums, a person that is entitled to returned premiums on behalf of the insured. A written copy of the trust agreement shall be filed with and approved by the Commissioner before becoming effective. The Commissioner shall disapprove any trust agreement filed under this sub-subdivision that does not assure the safety of the premiums collected. The investment income derived from the trust may be allocated as the parties consider to be proper. The person or affiliates shall deposit premiums collected into the trust account within 15 business days after collection; or
 - b. The person or affiliates shall provide to the insurer, and the insurer shall maintain in its possession, an unexpired, clean, irrevocable letter of credit, payable to the insurer, issued for a term of no less than one year and in conformity with the requirements set forth in this sub-subdivision, the amount of which equals or exceeds the liability of the person or affiliates to the insurer, at all times during the period that the letter of credit is in effect, for premiums collected by the person or affiliates. The letter of credit shall be issued under

arrangements satisfactory to the Commissioner and the letter shall be issued by a banking institution that is a member of the Federal Reserve System and that has a financial standing satisfactory to the Commissioner: or

- c. The person or affiliates shall provide to the insurer, and the insurer shall maintain in its possession, evidence that the person or affiliates have purchased and have currently in effect a financial guaranty bond, payable to the insurer, issued for a term of not less than one year and that is in conformity with the requirements set forth in this sub-subdivision, the amount of which equals or exceeds the liability of the person or affiliates to the insurer, at all times during which the financial guaranty bond is in effect, for the premiums collected by the person or persons. The financial guaranty bond shall be issued under an arrangement satisfactory to the Commissioner and the financial guaranty bond shall be issued by an insurer that is authorized to transact that business in this State, that has a financial standing satisfactory to the Commissioner, and that is neither controlled nor controlling in relation to either the insurer or the person or affiliates for whom the bond is purchased.

Premiums receivable under this subdivision will not be allowed as an admitted asset if a financial evaluation by the Commissioner indicates that the person or affiliates are unlikely to be able to pay the premiums as they become due. The financial evaluation shall be based on a review of the books and records of the controlling or controlled person.

- (7) Installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which the premiums apply.
- (8) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on that basis, to the extent of the unearned premium reserves carried thereon.
- (9) The full amount of reinsurance which is recoverable by a ceding insurer from a solvent reinsurer and is authorized under G.S. 58-7-21.
- (10) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty.

- (11) Deposits or equities recoverable from underwriting associations, syndicates, and reinsurance funds, or from any suspended banking institution, to the extent considered by the Commissioner to be available for the payment of losses and claims and at values to be determined by the Commissioner.
- (12) Electronic and mechanical machines, including operating and system software constituting a management information system, if the cost of the system is at least twenty-five thousand dollars (\$25,000) but not more than two percent (2%) of total admitted assets; the cost shall be amortized in full over a period not to exceed seven calendar years.
- (13) Other assets, not inconsistent with the provisions of this section, considered by the Commissioner to be available for the payment of losses and claims, at values to be determined by the Commissioner.

" § 58-7-163. Assets not allowed.

In addition to assets impliedly excluded by the provisions of G.S. 58-7-162, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

- (1) Goodwill, trade names, and other like intangible assets.
- (2) Advances (other than policy loans) to officers, directors, and controlling stockholders, whether secured or not, and advances to employees, agents, and other persons on personal security only.
- (3) Stock of the insurer or any material equity therein or loans secured thereby, or any material proportionate interest in the stock acquired or held through the ownership by the insurer of an interest in another firm, corporation, or business unit.
- (4) Furniture, fixtures, other equipment, safes, vehicles, libraries, stationery, literature, and supplies, other than data processing and accounting systems authorized under G.S. 58-7-162(12), except in the case of title insurers the materials and plants which G.S. 58-7-182 expressly authorizes the insurer to invest in, and except, in the case of any insurer, any personal property that the insurer is permitted to hold under this Chapter, or that is acquired through foreclosure of chattel mortgages acquired under G.S. 58-7-180, or that is reasonably necessary for the maintenance and operation of real estate that the insurer uses for a home office, branch office, and similar purposes.

- (5) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value of the investments as determined under this Chapter.
- (6) Bonds, notes, or other evidences of indebtedness that are secured by mortgages or deeds of trust that are in default, to the extent of the cost of carrying value that is in excess of the value as determined pursuant to other provisions of this Chapter.
- (7) Prepaid and deferred expenses.
- (8) Certificates of contribution or other similar evidences of indebtedness.

" § 58-7-165. Eligible investments.

(a) Insurers shall invest in or lend their funds on the security of, and shall hold as invested assets, only eligible investments as prescribed in this Chapter.

(b) Any particular investment held by an insurer on December 31, 1991, that was a legal investment when it was made, and that the insurer was legally entitled to possess immediately before January 1, 1992, is an eligible investment.

(c) Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated otherwise in this Chapter.

(d) Any investment limitation based upon the amount of the insurer's assets or particular funds shall relate to those assets or funds shown by the insurer's annual statement as of the December 31 preceding the date of acquisition of the investment by the insurer, or, if applicable, as shown by the most current quarterly financial statement filed by the insurer.

" § 58-7-167. General qualifications.

(a) No security or investment, other than real or personal property acquired under G.S. 58-7-187, is eligible for acquisition unless it is interest-bearing or interest-accruing, is entitled to receive dividends if and when declared and paid, or is otherwise income-producing, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

(b) No security or investment shall be eligible for purchase at a price above its market value unless it is approved by the Commissioner and is valued in accordance with valuation procedures of the NAIC that have been adopted by the Commissioner.

(c) This Chapter does not prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend, as a lawful distribution of assets, or under a lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. Any

investment so acquired that is not otherwise eligible under this Chapter shall be disposed of under G.S. 58-7-188 if the investment is in property or securities.

" § 58-7-168. Authorization of investment.

An insurer shall not make any investment or loan, other than a policy loan or annuity contract loan of a life insurer, unless the investment or loan is authorized or approved by the insurer's board of directors or by a committee authorized by the board and charged with the supervision or making of the investment or loan. The minutes of any such committee shall be recorded and regular reports of the committee shall be submitted to the board of directors.

" § 58-7-170. Diversification.

(a) Every insurer must maintain an amount equal to its entire policyholder-related liabilities and the minimum capital and surplus required to be maintained by the insurer under this Chapter invested in coin or currency of the United States and in investments authorized under this Chapter, other than the investments authorized under G.S. 58-7-183 or G.S. 58-7-187, except G.S. 58-7-187(b)(1).

(b) Investments eligible under subsection (a), except investments acquired under G.S. 58-7-183, are subject to the following limitations:

(1) The cost of investments made by insurers in stock authorized by G.S. 58-7-173 shall not exceed twenty-five percent (25%) of the insurer's admitted assets, provided that no more than twenty percent (20%) of the insurer's admitted assets shall be invested in common stock; and the cost of an investment in stock of any one corporation shall not exceed three percent (3%) of the insurer's admitted assets. Notwithstanding any other provision in this Chapter, the financial statement carrying value of all stock investments shall be used for the purpose of determining the asset value against which the percentage limitations are to be applied.

(2) Other limitations, if any, that are expressly provided for in any provision under which the investment is authorized.

(c) The cost of investments made by insurers in a mortgage loan authorized by G.S. 58-7-179 shall not exceed the lesser of five percent (5%) of the insurer's admitted assets or ten percent (10%) of the insurer's capital and surplus. An insurer shall not invest in additional mortgage loans without the Commissioner's consent if the admitted value of all mortgage loans held by the insurer exceeds an aggregate of sixty percent (60%) of the admitted assets of the insurer, if (i) the admitted value of all mortgage pass-through securities permitted by G.S. 58-7-173(17) does not exceed twenty-five percent (25%) of the admitted assets of the insurer and (ii) the admitted value of other

mortgage loans permitted by G.S. 58-7-179 does not exceed forty percent (40%) of the admitted assets of the insurer.

An insurer that, as of October 1, 1991, has mortgage investments that exceed the aggregate limitation specified in this subsection shall submit to the Commissioner no later than January 31, 1992, a plan to bring the amount of mortgage investments into compliance with the limitations by January 1, 2001.

(d) Without the Commissioner's prior written approval, the cost of investments in bonds, debentures, notes, commercial paper, or other debt obligations issued, assumed, or guaranteed by any solvent United States institution, and that are classified as medium to lower quality obligations, other than obligations of subsidiaries or affiliated corporations as that term is defined in G.S. 58-7-177, shall be limited to:

- (1) No more than twenty percent (20%) of an insurer's admitted assets;
- (2) No more than ten percent (10%) of an insurer's admitted assets in obligations that have been given a rating of 4, 5, or 6 by the Securities Valuation Office of the NAIC;
- (3) No more than three percent (3%) of an insurer's admitted assets in obligations that have been given a rating of 5 or 6 by the Securities Valuation Office of the NAIC;
- (4) No more than one percent (1%) of an insurer's admitted assets in obligations that have been given a rating of 6 by the Securities Valuation Office of the NAIC;
- (5) No more than ten percent (10%) of an insurer's admitted assets, if the investments are in issuers from any one industry; and
- (6) No more than two percent (2%) of an insurer's admitted assets or ten percent (10%) of an insurer's capital and surplus, whichever is greater, if the investment is in any one issuer.

(e) As used in subsections (d), (f), (g), and (h) of this section, 'medium to lower quality obligations' means obligations that have been given a rating of 3, 4, 5, or 6 by the Securities Valuation Office of the NAIC. As used in subsection (d) of this section, 'industry' means a distinct and recognized area of economic activity that consists of the production, manufacture, or distribution of common goods, products, commodities, or services.

(f) Each insurer shall possess and maintain adequate documentation to establish that its investments in medium to lower quality obligations do not exceed the limitations under subsection (d).

(g) The provisions of subsections (d), (e), and (f) of this section apply to any investment made after December 31, 1991. If an

insurer's investments in medium to lower quality obligations equal or exceed the maximum amounts permitted by subsection (d) as of December 31, 1991, the insurer shall not acquire any additional medium to lower quality obligations without the Commissioner's prior written approval. An insurer that is not in compliance with subsection (d) of this section as of December 31, 1991, may hold until maturity or until December 31, 1995, whichever is sooner, only those medium to lower quality obligations it owns on that date, if the obligations were obtained in compliance with the law in effect when the investments were made. If the insurer sells, transfers, or otherwise disposes of the securities before maturity, the insurer may not acquire any medium to lower quality obligations as substitutions or replacements without the Commissioner's prior approval.

(h) An insurer that is not in compliance with subsection (d) of this section on December 31, 1991, shall file with its annual statement a separate schedule of the medium to lower quality obligations it owns on December 31, 1991. Until it is in compliance with subsection (d) of this section, the insurer shall file with each succeeding annual and quarterly statement a separate schedule of the medium to lower quality obligations it owns as of the reporting date of the filed statement.

(i) Failure to obtain the Commissioner's prior written approval shall result in any investments in excess of those permitted by subsection (d) of this section not being allowed as an asset of the insurer.

(j) The Commissioner may limit the extent of an insurer's deposits with any financial institution that does not meet its regulatory capital requirement if the Commissioner determines that the financial solvency of the insurer is threatened by a deposit in excess of insured limits.

(k) The provisions of this section supersede any inconsistent provision of section 106 of the Secondary Mortgage Market Enhancement Act of 1984, 15 U.S.C. § 77r-1, to the extent permitted by that Act.

"§ 58-7-172. Cash and deposits.

An insurer may have funds in coin or currency of the United States on hand or on deposit in any solvent national or state bank, savings and loan association, or trust company.

"§ 58-7-173. Permitted insurer investments.

An insurer may invest in:

- (1) Bonds, notes, warrants, and other evidences of indebtedness that are direct obligations of the U.S. Government or for which the full faith and credit of the U.S. Government is pledged for the payment of principal and interest.

- (2) Loans insured or guaranteed as to principal and interest by the U.S. Government or by any agency or instrumentality of the U.S. Government to the extent of the insurance or guaranty.
- (3) Student loans insured or guaranteed as to principal by the U.S. Government or by any agency or instrumentality of the U.S. Government to the extent of the insurance or guaranty.
- (4) Bonds, notes, warrants, and other securities not in default that are the direct obligations of any state or United States territory or the government of Canada or any Canadian province, or for which the full faith and credit of such state, government, or province has been pledged for the payment of principal and interest.
- (5) Bonds, notes, warrants, and other securities not in default of any county, district, incorporated city, or school district in any state of the United States, or the District of Columbia, or in any Canadian province, that are the direct obligations of the county, district, city, or school district and for payment of the principal and interest of which the county, district, city, or school district has lawful authority to levy taxes or make assessments.
- (6) Bonds, notes, certificates of indebtedness, warranties, or other evidences of indebtedness that are payable from revenues or earnings specifically pledged therefor of any public toll bridge, structure, or improvement owned by any state, incorporated city, or legally constituted public corporation or commission, all within the United States or Canada, for the payment of the principal and interest of which a lawful sinking fund has been established and is being maintained and if no default by the issuer in payment of principal or interest has occurred on any of its bonds, notes, warrants, or other securities within five years prior to the date of investment therein.
- (7) Bonds, notes, certificates of indebtedness, warrants, or other evidences of indebtedness that are valid obligations issued, assumed, or guaranteed by the United States, any state, any county, city, district, political subdivision, civil division, or public instrumentality of any such government or unit thereof, or in any province of Canada; if by statute or other legal requirements the obligations are payable as to both principal and interest from revenues or earnings from the whole or any part of any utility supplying water, gas, a sewage disposal facility, electricity, or any other public

- service, including but not limited to a toll road or toll bridge.
- (8) Bonds, debentures, or other securities of the following agencies, whether or not those obligations are guaranteed by the U.S. Government:
- a. The Federal National Mortgage Association, and stock thereof when acquired in connection with the sale of mortgage loans to the Association.
 - b. Any federal land bank, when the securities are issued under the Farm Loan Act;
 - c. Any federal home loan bank, when the securities are issued under the Home Loan Bank Act;
 - d. The Home Owners' Loan Corporation, created by the Home Owners' Loan Act of 1933;
 - e. Any federal intermediate credit bank, created by the Agricultural Credits Act;
 - f. The Central Bank for Cooperatives and regional banks for cooperatives organized under the Farm Credit Act of 1933, or by any of such banks; and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions under the Farm Credit Act of 1971;
 - g. Any other similar agency of the U.S. Government that is of similar financial quality.
- (9) Bonds, debentures, or other securities of public housing authorities, issued under the Housing Act, of 1949, the Municipal Housing Commission Act, or the Rural Housing Commission Act, or issued by any public housing authority or agency in the United States, if the bonds, debentures, or other securities are secured by a pledge of annual contributions to be paid by the United States or any United States agency; and the cost of investments made under this subdivision shall not exceed the lesser of three percent (3%) of the insurer's admitted assets or ten percent (10%) of the insurer's capital and surplus.
- (10) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank; and the cost of investments made under this subdivision shall not exceed the lesser of three percent (3%) of the insurer's admitted assets or ten percent (10%) of the insurer's capital and surplus.

- (11) Bonds, notes, or other interest-bearing or interest-accruing obligations of any solvent institution organized under the laws of the United States, of any state, Canada or any Canadian province; provided such instruments are rated and approved by the Securities Valuation Office of the NAIC.
- (12) Secured obligations of duly constituted churches and of church-holding companies; and the cost of investments made under this subdivision shall not exceed the lesser of one percent (1%) of the insurer's admitted assets or five percent (5%) of the insurer's capital and surplus.
- (13) Equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States, and the right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of that transportation equipment; and the cost of investments made under this subdivision shall not exceed twenty percent (20%) of the insurer's admitted assets.
- (14) Share or savings accounts of savings and loan associations or building and loan associations; and the cost of investments made under this subdivision shall not exceed the lesser of three percent (3%) of the insurer's admitted assets or five percent (5%) of the insurer's capital and surplus.
- (15) Loans with a maturity not in excess of 12 years from the date thereof that are secured by the pledge of securities eligible for investment under this Chapter or by the pledge or assignment of life insurance policies issued by other insurers authorized to transact insurance in this State. On the date made, no such loan shall exceed in amount seventy-five percent (75%) of the market value of the collateral pledged, except that loans upon the pledge of U.S. Government bonds and loans upon the pledge or assignment of life insurance policies shall not exceed ninety-five percent (95%) of the market value of the bonds or the cash surrender value of the policies pledged. The market value of the collateral pledge shall at all times during the continuance of the loans meet or exceed the minimum percentages herein. Loans made under this section shall not be renewable beyond a period of 12 years from the date of the loan.
- (16) Stocks, common or preferred, of any corporation created or existing under the laws of the United States, any U.S.

territory, Canada or any Canadian province, or of any state. An insurer may invest in stocks, common or preferred, of any corporation created or existing under the laws of any foreign country other than Canada if the stocks are listed and traded on a national securities exchange in the United States or if the investment in stocks of any corporation created or existing under the laws of any foreign country are first approved by the Commissioner. Nothing in this section applies to qualifying investments made by an insurer in a foreign country under authority of G.S. 58-7-178.

- (17) Mortgage pass-through securities and derivatives thereof, including, without limitation, collateral mortgage obligations backed by a pool of mortgages of the kind, class, and investment quality as those eligible for investment under G.S. 58-7-179, but not including investments permitted under G.S. 58-7-173(2), (8), or (11).

" § 58-7-175. Policy loans.

A life insurer may lend to its policyholder, upon pledge of the policy as collateral security, any sum not exceeding the cash loan value of the policy; or may lend against pledge or assignment of any of its supplementary contracts or other contracts or obligations, as long as the loan is adequately secured by the pledge or assignment. Loans so made are eligible investments of the insurer.

" § 58-7-177. Investments in subsidiaries and affiliated corporations.

(a) Any insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries, subject to the limitations of this Chapter. The subsidiaries may conduct any kind of business, and their authority to do so shall not be limited because they are subsidiaries of an insurer, except where in conflict with Article 19 of this Chapter.

(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this Chapter, an insurer may also invest and maintain investments in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries or affiliated corporations under the provisions and limitations outlined in G.S. 58-19-10.

(c) For purposes of this section:

(1) 'Subsidiary' has the same meaning as in G.S. 58-19-5(7).

(2) 'Affiliated' has the same meaning as in G.S. 58-19-5(1).

(d) Debt obligations, other than mortgage loans, made under the authority of this section must meet amortization requirements in accordance with the latest edition of the NAIC publication entitled

'Valuation of Securities'; provided that the amortization methodology is acceptable to the Commissioner.

(e) For purposes of this section, an insurer's investment in a subsidiary or affiliated corporation shall be considered to include all sums lent to the subsidiary or affiliated corporation.

" § 58-7-178. Foreign or territorial investments.

An insurer authorized to transact insurance in a foreign country or any U.S. territory may have funds invested in securities that may be required for that authority and for the transaction of that business. Canadian securities eligible for investment under other provisions of this Chapter are not subject to this section. Unless disapproved by the Commissioner:

- (1) An insurer may invest in Eurodollar certificates of deposit issued by foreign branches of United States commercial banks.
- (2) In addition to Canadian securities eligible for investment and to investments in countries in which an insurer transacts insurance, an insurer may invest in bonds, notes, or stocks of any foreign country or alien corporation if the security meets the general requirements of G.S. 58-7-167 and does not exceed, in total, five percent (5%) of admitted assets.

" § 58-7-179. Mortgage loans.

(a) An insurer may invest any of its funds in bonds, notes, or other evidences of indebtedness that are secured by first mortgages or deeds of trust upon improved real property located in the United States, any U.S. territory, or Canada, or that are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than 30 years, inclusive of the terms that may be provided by enforceable options of renewal, as long as the loan matures at least 20 years before the expiration of such lease, in improved real property located in the United States, any U.S. territory, or Canada. In all cases the security for the loan must be a first lien upon the real property, and there must not be any condition or right of reentry or forfeiture not insured against under which, in the case of real property other than leaseholds, the lien can be cut off or subordinated or otherwise disturbed, or under which, in the case of leaseholds, the insurer cannot continue the lease in force for the duration of the loan. Nothing herein prohibits any investment because of the existence of any prior lien for ground rents, taxes, assessments, or other similar charges not yet delinquent. This section does not prohibit investment in mortgages or similar obligations when made under G.S. 58-7-180.

(b) 'Improved real property' means all farmlands used for tillage, crops, or pasture; timberlands; and all real property on which permanent improvements, and improvements under construction or in process of construction, suitable for residential, institutional, commercial, or industrial use are situated.

(c) No such mortgage loan or loans made or acquired by an insurer on any one property shall, at the time of investment by the insurer, exceed the larger of the following amounts, as applicable:

- (1) Ninety-five percent (95%) of the value of the real property or leasehold securing the real property in the case of a mortgage on a dwelling primarily intended for occupancy by not more than four families if they insure down to seventy-five percent (75%) with a licensed mortgage insurance company, or seventy-five percent (75%) of the value in the case of other real estate mortgages;
- (2) The amount of any insurance or guaranty of the loan by the United States or by an agency or instrumentality thereof; or
- (3) The percentage-of-value limit on the amount of the loan applicable under subdivision (1) of this subsection, plus the amount by which the excess of the loan over the percentage-of-value limit is insured or guaranteed by the United States or by any agency or instrumentality thereof.

(d) In the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount lent or invested shall not exceed the unpaid part of the purchase price and shall be valued in accordance with G.S. 58-7-195.

(e) Nothing in this section prohibits an insurer from renewing or extending a loan for the original or a lesser amount where a shrinkage in value of the real estate securing the loan would cause its value to be less than the amount otherwise required in relation to the amount of the loan.

" § 58-7-180. Chattel mortgages.

(a) In connection with a mortgage loan on the security of real estate designed and used primarily for residential purposes only, where the mortgage loan was acquired under G.S. 58-7-179, an insurer may lend or invest an amount not exceeding twenty percent (20%) of the amount lent on or invested in such real estate mortgage on the security of a chattel mortgage to be amortized by regular periodic payments with a term of not more than five years, and representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.

(b) For the purposes of this section, the term 'durable equipment' includes only mechanical refrigerators, air-conditioning equipment, mechanical laundering machines, heating and cooking stoves and ranges, and, in addition, in the case of apartment houses and hotels, room furniture and furnishings.

(c) Before the acquisition of a chattel mortgage under this section, items of property to be included therein shall be separately appraised by a qualified appraiser and the fair market value determined. No such chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property.

(d) This section does not prohibit an insurer from taking liens on personal property as additional security for any investment otherwise eligible under this Chapter.

" § 58-7-182. *Special investments by title insurers.*

In addition to other investments eligible under this Chapter, a title insurer may invest and have invested an amount not exceeding the greater of three hundred thousand dollars (\$300,000) or fifty percent (50%) of that part of its policyholders' surplus that exceeds the minimum surplus required by G.S. 58-7-75 in its abstract plant and equipment, in loans secured by mortgages on abstract plants and equipment, and, with the Commissioner's consent, in stocks of abstract companies.

" § 58-7-183. *Special consent investments.*

(a) After satisfying the requirements of this Chapter, any funds of an insurer in excess of its reserves and policyholders' surplus required to be maintained may be invested:

- (1) Without limitation in any investments otherwise authorized by this Chapter; or
- (2) In such other investments not specifically authorized by this Chapter as long as any single interest investment does not exceed two percent (2%) of admitted assets and the aggregate of the investments does not exceed the lesser of five percent (5%) of the insurer's total admitted assets or twenty percent (20%) of the amount by which the insurer's policyholders' surplus exceeds the minimum required to be maintained.

The limitations in subdivision (2) of this subsection may be exceeded if approved in writing by the Commissioner.

(b) In no case shall the investments authorized under this section being held by an insurer be greater than the amount by which the insurer's policyholders' surplus exceeds the minimum reserves and policyholders' surplus required to be maintained.

(c) Notwithstanding the provisions of this section, an insurer may not invest in investments prohibited by this Chapter.

" § 58-7-185. Prohibited investments and investment underwriting.

(a) In addition to investments excluded under other provisions of this Chapter, except with prior approval by the Commissioner, an insurer shall not directly or indirectly invest in or lend its funds upon the security of:

- (1) Issued shares of its own capital stock, except in connection with a plan for purchase of the shares by the insurer's officers, employees, or agents. No such stock shall, however, constitute an asset of the insurer in any determination of its financial condition.
- (2) Except with the Commissioner's consent, securities issued by any corporation or enterprise, the controlling interest of which is or will after acquisition by the insurer be held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries, or controlling stockholders. Investments in subsidiaries under G.S. 58-7-177 are not subject to this provision.
- (3) Any note or other evidence of indebtedness of any director, officer, or controlling stockholder of the insurer, except as to policy loans authorized under G.S. 58-7-175 and loans authorized under G.S. 58-7-200(e).

(b) No insurer shall underwrite or participate in the underwriting of an offering of securities or property by any other person.

" § 58-7-187. Real estate, in general.

(a) An insurer shall not directly or indirectly acquire or hold real estate except as authorized in this section.

(b) An insurer may acquire and hold:

- (1) Land and buildings thereon used or acquired for use as its principal home office and branch offices, or used in conjunction with such offices, for the convenient transaction of its own business.
- (2) Real property acquired in satisfaction in whole or in part of loans, mortgages, liens, judgments, decrees, or debts previously owing to the insurer, in the course of its business.
- (3) Real property acquired in part payment of the consideration on the sale of other real property owned by it, if the transaction effects a net reduction in the insurer's investment in real estate.

- (4) Real property acquired by gift or devise or through merger, consolidation, or bulk reinsurance of another insurer under this Chapter.
- (5) Additional real property and equipment incident to real property, if necessary or convenient for the enhancement of the marketability or sale value of real property previously acquired or held by it under subdivisions (2) through (4) of this subsection.

(c) An insurer may acquire and hold real property for investment, subject to the following conditions:

- (1) The amount shall not exceed in the aggregate the lesser of five percent (5%) of the insurer's admitted assets or fifteen percent (15%) of the insurer's capital and surplus.
- (2) The amount in any one property shall not exceed one percent (1%) of the insurer's admitted assets.
- (3) The amount in unimproved land shall not exceed one-half of one percent (0.5%) of the insurer's admitted assets.
- (4) There shall be no time limit for the disposal of investment real estate.

(d) The amount in real property acquired and held by an insurer shall not exceed fifteen percent (15%) of the insurer's admitted assets; but the Commissioner may permit an insurer to invest in real property in such increased amount as the Commissioner considers to be proper.

"§ 58-7-188. Time limit for disposal of ineligible property and securities; effect of failure to dispose.

(a) Any property or securities lawfully acquired by an insurer that it could not otherwise have invested in or lent its funds upon at the time of the acquisition shall be disposed of within three years from the date of acquisition, unless within that period the security has attained to the standard of eligibility; except that any security or property acquired under any agreement of bulk reinsurance, merger, or consolidation may be retained for a longer period if so provided in the plan for the reinsurance, merger, or consolidation as approved by the Commissioner under this Chapter. Upon application by the insurer and proof that forced sale of any such property or security would materially injure the insurer's interests, the Commissioner may extend the disposal period for an additional reasonable time.

(b) Any property or securities lawfully acquired and held by an insurer after expiration of the period for their disposal or any extension of the period granted by the Commissioner shall not be allowed as an asset of the insurer.

"§ 58-7-190. Valuation of bonds and other evidences of indebtedness.

(a) All bonds or fully secured indebtedness having a stated term and a rate of interest that are held by an insurer, if fully secured and not in default as to principal or interest, shall be valued as follows: (i) if purchased at par, at par value; (ii) if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made or, in lieu of that method, according to an accepted method of valuation approved by the Commissioner; except that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

(b) The Commissioner may, after notice and opportunity for hearing, determine the method of calculating any values under this section.

"§ 58-7-192. Valuation of other securities and investments.

(a) All securities, investments, and evidences of debt, other than those for which valuation methodologies are specifically set forth in this Chapter, that are held by an insurer shall be valued at their market values, at their appraised values, or at prices determined by the insurer as representing their fair market values, subject to the Commissioner's approval.

(b) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, in the Commissioner's discretion and in accordance with a method of valuation that the Commissioner approves.

(c) Stock of a subsidiary corporation of an insurer shall not be valued at an amount in excess of its net value as based upon those assets only of the subsidiary that would be eligible under this Chapter and G.S. 58-19-10 for investment of the funds of the insurer direct.

(d) No valuations under this section shall be greater than any applicable valuation or method contained in the latest edition of the NAIC publication entitled 'Valuations of Securities', unless the Commissioner determines that another valuation method is appropriate when it results in a more conservative valuation.

"§ 58-7-193. Valuation of property.

(a) Real property acquired pursuant to a mortgage loan or contract for sale shall be valued at the net realizable value, but in no event shall the property be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of the acquisition and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(b) Other real property held by an insurer shall not be valued at an amount in excess of fair market value as determined by recent

appraisal and as approved by the Commissioner. If valuation is based on an appraisal more than three years old, the Commissioner may call for and require a new appraisal in order to determine fair value.

(c) Personal property acquired pursuant to chattel mortgages made in accordance with G.S. 58-7-180 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at the date of acquisition, or the fair market value of the property, whichever amount is less.

(d) If the Commissioner and an insurer do not agree on the value of real or personal property of an insurer, in carrying out the Commissioner's responsibilities under this section, the Commissioner may retain the services of a qualified real or personal property appraiser. The insurer shall reimburse the Commissioner for the costs of the services of any appraiser incurred with respect to the Commissioner's responsibilities under this section.

" § 58-7-195. *Valuation of purchase money mortgages.*

Purchase money mortgages on real property referred to in G.S. 58-7-193(a) shall be valued in an amount not exceeding the greater of seventy-five percent (75%) of the acquisition cost to the insurer, or seventy-five percent (75%) of the fair market value, of the real property covered thereby.

" § 58-7-197. *Replacing certain assets; reporting certain liabilities.*

(a) The Commissioner, upon determining that an insurer's asset has not been valued according to this Chapter or that it does not qualify as an asset, shall require the insurer to properly revalue an improperly valued asset or replace a nonadmitted asset with an asset suitable to the Commissioner within 90 days after the determination.

(b) The Commissioner, upon determining that an insurer has failed to report certain liabilities that should have been reported, shall require that the insurer report those liabilities to the Commissioner within 90 days after notice to the insurer.

(c) When the Commissioner determines that an admitted asset held by any insurer is of doubtful value or is without ascertainable value on a public exchange, unless the insurer establishes a value by placing the asset upon the market and obtaining a bona fide offer for the asset, the Commissioner may have the asset appraised, and the appraisal shall be the true value of the asset. No asset may be carried in an insurer's financial statement under G.S. 58-2-165 at an appraised value established by the insurer unless the Commissioner's prior written approval is obtained.

(d) When any admitted asset defaults as to principal or in the payment of interest or dividends after it has been purchased by an insurer, the asset shall subsequently be carried at its market value or,

after notice and opportunity for hearing, at a value determined by the Commissioner.

(e) Whenever it appears to the Commissioner that an insurer has acquired any asset in violation of this Chapter, the Commissioner shall disallow, in whole or in part, the amount of the asset that is prohibited by this Chapter. In any determination of the financial position of the insurer, that amount shall be deducted as a nonadmitted asset of the insurer.

" § 58-7-198. Assets of foreign or alien insurers.

The Commissioner may refuse a new or renewal license to any foreign or alien insurer upon finding that its assets do not comply in substance with the investment requirements and limitations imposed by this Chapter upon like domestic insurers whenever authorized to do the same kinds of insurance business.

" § 58-7-200. Investment transactions.

(a) The transactions specified in subsections (b) through (e) of this section are expressly allowed or prohibited as provided in this section and to the extent they are not in conflict with other provisions of this Chapter.

(b) Notwithstanding any expressed or implied prohibitions, an insurer may effect or maintain bona fide hedging transactions pertaining to securities otherwise eligible for investment under this section, including, but not limited to (i) financial futures contracts, warrants, options, calls and other rights to purchase; and (ii) puts and other rights to require another person to purchase the securities. The contracts, options, calls, puts and rights shall be traded on a securities exchange or board of trade regulated under the laws of the United States. For the purposes of this subsection, 'bona fide hedging transaction' means a purchase or sale of such a contract, warrant, option, call, put or right, entered into for the purpose of offsetting changes in the market value of a security held by the company.

(c) No insurer shall make any direct or indirect loan to any of its directors, officers, or controlling stockholders; nor shall the insurer make any loan to any other person in which the officer, director, or stockholder is substantially interested; nor shall any such director, officer, or stockholder directly or indirectly accept any such loan.

(d) No director, officer, or controlling stockholder of any insurer shall receive any money or valuable thing, either directly or indirectly or through any substantial interest in any other person, for negotiating, procuring, recommending, or aiding in any purchase or sale of property or loan from the insurer; or be monetarily interested either as principal, corporation, agent, or beneficiary, in any such purchase, sale, or loan; and no financial obligation of any such director, officer, or stockholder shall be guaranteed by the insurer.

'Substantial interest in any other person' means an interest equivalent to ownership or control by a director, officer, or controlling stockholder or the aggregate ownership or control by all directors, officers, and controlling stockholders of the same insurer of those percentages or more of the stock of the person, as defined under 'control' in G.S. 58-19-5(2).

(e) Nothing in this section prohibits:

- (1) A director or officer of any insurer from receiving the usual salary, compensation, or emoluments for services rendered in the ordinary course of that person's duties as a director or officer, if the salary, compensation, or emolument is authorized by vote of the board of directors of the insurer;
- (2) Any insurer in connection with the relocation of the place of employment of an officer, including any relocation in connection with the initial employment of the officer, from (i) making, or the officer from accepting therefrom, a mortgage loan to the officer on real property owned by the officer that is to serve as the officer's residence or (ii) acquiring, or the officer from selling thereto, at not more than its fair market value, the officer's prior residence;
- (3) The payment to a director or officer of any such insurer who is a licensed attorney-at-law of fees in connection with loans made by the insurer if and when the fees are paid by the borrower and do not constitute a charge against the insurer; or
- (4) An insurer from making a loan upon a policy held therein by the borrower not in excess of the policy's net value."

Sec. 30. G.S. 58-7-85, 58-7-90, and 58-7-100 are repealed.

Sec. 30.1. G.S. 58-13-5 reads as rewritten:

" § 58-13-5. *Purposes.*

The purposes of this Article are to require insurers to maintain unencumbered assets in amounts equal to reserve ~~liabilities~~; liabilities and minimum required capital and minimum required surplus; to provide preferential claims against insurers' assets in favor of owners, beneficiaries, assignees, and holders of insurance policies and certificates; and to prevent the pledging, hypothecation, or encumbrance of assets ~~in excess of certain amounts~~ without a prior written order of the Commissioner."

Sec. 30.2. G.S. 58-13-10 reads as rewritten:

" § 58-13-10. *Scope.*

This Article applies to all domestic insurers and to all kinds of insurance written by those insurers under Articles 1 through 66 of this Chapter. Foreign insurers are to comply in substance with the

requirements and limitations of this section. This Article does not apply to variable contracts for which separate accounts are required to be maintained nor to county farm mutual companies."

Sec. 30.3. G.S. 58-13-25(a) and (b) read as rewritten:

~~"(a) Every insurer subject to this Article shall at all times have and maintain free and unencumbered assets in an amount equal to its reserve liabilities. No insurer shall pledge, hypothecate, or otherwise encumber its assets in an amount in excess of the amount of its capital and surplus. No insurer shall pledge, hypothecate, or otherwise encumber more than ten percent (10%) of its reserve assets. The Commissioner, upon application made to him, may issue a written order approving the pledging, hypothecation, or encumbrance of any of the assets of an insurer in any amount upon a finding that the pledging, hypothecation, or encumbrance will not adversely affect the solvency of the insurer. Every insurer subject to this Article shall at all times have and maintain free and unencumbered reserve assets equal to an amount that is at least ten percent (10%) more than the total of its reserve liabilities and its required minimum capital and minimum surplus and shall not pledge, hypothecate, or otherwise encumber those reserve assets. The Commissioner, upon application made to the Commissioner, may issue a written order approving the pledging, hypothecation, or encumbrance of any of the assets of an insurer not otherwise prohibited upon a finding that the pledging, hypothecation, or encumbrance will not adversely affect the insurer's solvency.~~

~~(b) Any insurer that pledges, hypothecates, or otherwise encumbers any of its assets shall within 10 days thereafter report in writing to the Commissioner the amount and identity of the assets so pledged, hypothecated, or encumbered and the terms and conditions of the transaction. In addition, the Every insurer shall file, along with its statement under G.S. 58-2-165, a statement sworn to by the chief executive officer of the insurer that: (i) Title to assets in an amount equal to the reserve liability and minimum required capital and minimum required surplus of the insurer that are not pledged, hypothecated, or otherwise encumbered is vested in the insurer; (ii) the only assets of the insurer that are pledged, hypothecated, or otherwise encumbered are as identified and reported in the sworn statement and no other assets of the insurer are pledged, hypothecated, or otherwise encumbered; and (iii) the terms and provisions of the transaction of the pledge, hypothecation, or encumbrance are as reported in such the sworn statement."~~

Sec. 31. G.S. 58-19-15(e) reads as rewritten:

"(e) The public hearing referred to in subsection (d) of this section shall be held within 120 days after the statement required by

subsection (a) of this section is filed, and the Commissioner shall give at least 60 30 days notice thereof shall be given by the Commissioner of the hearing to the person filing the statement, to the insurer, and to such other persons as may be designated by the Commissioner. The Commissioner shall make a determination as expeditiously as is reasonably practicable after the conclusion of ~~such~~ the hearing. At ~~such~~ the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected ~~thereby by the hearing~~ shall have the right to present evidence, examine and cross-examine witnesses, and offer oral or written arguments; and in connection therewith shall be entitled to conduct discovery proceedings at any time after the statement is filed with the Commissioner ~~pursuant to~~ under this section and in the same manner as is presently allowed in the superior courts of this State. In connection with discovery proceedings authorized by this section, the Commissioner ~~is authorized to~~ may issue such protective orders and other orders governing the timing and scheduling of discovery proceedings as might otherwise have been issued by a superior court of this State in connection with a civil proceeding. ~~In the event~~ If any party fails to make reasonable and adequate response to discovery on a timely basis or fails to comply with any order of the Commissioner with respect to discovery, the Commissioner on ~~his~~ the Commissioner's own motion or on motion of any other party or person may order that the hearing be ~~postponed postponed, or recessed, shall be convened~~ convened, or reconvened, as the case may be, following proper completion of discovery and reasonable notice to the person filing the statement, to the insurer, and to such other persons as may be designated by the Commissioner."

Sec. 32. G.S. 58-19-15(h) reads as rewritten:

"(h) The provisions of this section do not apply to any offer, request, invitation, agreement, or acquisition that the Commissioner by order exempts therefrom as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section. Nor does this section apply to any transaction that is subject to the provisions of G.S. 58-7-150."

Sec. 33. G.S. 58-19-25(a) reads as rewritten:

"(a) Every insurer that is licensed to do business in this State and that is a member of an insurance holding company system shall register with the Commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially

similar to those contained in this section and G.S. 58-19-30(a). ~~Such~~ The insurer shall also file a copy of its registration statement and any amendments thereto to the statement in each state in which that insurer is authorized to do business if requested by the insurance regulator of that state. Any insurer that is subject to registration under this section shall register within 30 days after it becomes subject to registration, and an amendment to the registration statement shall be filed by March 4 31 of each year for any changes that may have occurred during the previous calendar year; unless the Commissioner for good cause shown extends the time for registration or filing, and then within such that extended time. All registration statements shall contain a summary, on a form prescribed by the Commissioner, outlining all items in the current registration statement representing changes from the prior registration statement. The Commissioner may require any insurer that is a member of a holding company system that is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such the insurance company with the insurance regulator of its domiciliary jurisdiction."

Sec. 34. G.S. 58-19-25(d) reads as rewritten:

"(d) Subject to G.S. ~~58-19-30(b), 58-19-30(c)~~, each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within 15 business days following the declaration thereof. The Commissioner may prescribe the form to be used to report that information."

Sec. 35. G.S. 58-19-30(b) reads as rewritten:

"(b) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into ~~such the~~ such the transaction at least 30 days ~~prior thereto, before the transaction,~~ prior thereto, before the transaction, or such shorter period as the Commissioner permits, and the Commissioner has not disapproved it within ~~such that~~ such that period:

- (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided ~~such the~~ such the transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the ~~preceding 31st day of December 31, next preceding,~~ preceding 31st day of December 31, next preceding,
- (2) Loans or extensions of credit to any person who is not affiliated, where the insurer makes ~~such the~~ such the loans or extensions of credit with the agreement or understanding that

the proceeds of ~~such the~~ transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making ~~such the~~ loans or extensions of credit provided ~~such the~~ transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the ~~preceding 31st day of December 31, next preceding,~~

- (3) Reinsurance agreements or modifications ~~thereto~~ to the agreements in which the reinsurance premium or a change in the the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the preceding 31st day of December 31, next preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of ~~such the~~ assets will be transferred to one or more affiliates of the insurer.
- (4) All management ~~agreements that would place control of the insurer outside of the insurance holding company system,~~ agreements, service contracts, or cost-sharing arrangements wherein the annual aggregate cost to the insurer would equal or exceed the amounts specified in subdivision (1) of this subsection.
- (5) All ~~service contracts or cost-sharing arrangements wherein the annual aggregate cost to the insurer would equal or exceed the amounts specified in subdivision (1) of this subsection.~~
- ~~(6)~~(5) Any material transactions, specified by rule, that the Commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this section authorizes or permits any transactions that, in the case of an insurer, not a member of the same holding company system, would be otherwise contrary to law. A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the Commissioner determines that such separate transactions were entered into over any 12-month period for ~~such that~~ purpose, ~~he~~ the Commissioner may exercise ~~his~~ the Commissioner's authority

under G.S. 58-19-50. The Commissioner, in reviewing transactions pursuant to this subsection, shall consider whether the transactions comply with the standards set forth in subsection (a) of this section and whether they may adversely affect the interests of policyholders. The Commissioner shall be notified within 30 days after any investment of a domestic insurer in any one corporation if, as a result of ~~any such~~ the investment, the total investment in ~~such the~~ corporation by the insurance holding company system exceeds ten percent (10%) of ~~such the~~ corporation's voting securities."

Sec. 36. G.S. 58-19-30(c) reads as rewritten:

"(c) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) 30 days after the Commissioner has received notice of the declaration thereof and has not within ~~such that~~ period disapproved ~~such the~~ payment or (ii) the Commissioner has approved ~~such the~~ payment within ~~such the~~ 30-day period.

For the purposes of this section, an 'extraordinary dividend' or 'extraordinary distribution' includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the ~~greater~~ lesser of (i) ten percent (10%) of ~~such the~~ insurer's surplus as regards policyholders as of the ~~preceding 31st day of December 31, next preceding,~~ or (ii) the net gain from operations of ~~such the~~ insurer, if ~~such the~~ insurer is a life ~~insurer;~~ insurer, or the ~~greater of (i) the net income or (ii) the net investment income, if such the~~ insurer is not a life insurer, not including realized capital gains, for the 12-month period ending the ~~preceding 31st day of December 31; next preceding;~~ but does not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carryforward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the Commissioner's ~~approval thereof, approval,~~ and ~~such a~~ the declaration shall confer no rights upon shareholders until (i) the Commissioner has approved the payment of ~~such a~~ the dividend or distribution or (ii) the Commissioner has not disapproved ~~such the~~ payment within the 30-day period referred to above."

Sec. 37. G.S. 58-19-45(c) reads as rewritten:

"(c) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this Article or any rule or order of the Commissioner under this Article, the Superior Court of Wake County may, on such notice as the court considers appropriate and upon the application of the insurer or the Commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by ~~such~~ the person, and issue ~~such an~~ order with respect thereto as may be appropriate to effectuate the provisions of this Article. Notwithstanding any other provision of law, for the purposes of this Article the sites of the ownership of the securities of domestic insurers are in this State."

Sec. 38. Article 19 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-19-17. Foreign or alien insurer's report of change of control.

(a) As used in this section, 'controlling capital stock' means enough of an insurer's shares of the issued and outstanding stock, as defined in G.S. 58-19-5(2), to give its owner the power to exercise a controlling influence over the management or policies of the insurer.

(b) If there is a change in the controlling capital stock or a change of twenty-five percent (25%) or more of the assets of a foreign or alien insurer, the insurer shall report the change in writing to the Commissioner within 30 days after the effective date of the change. The report shall be in a form prescribed by the Commissioner and shall contain the name and address of the new owners of the controlling stock or assets, the nature and value of the new assets, and other relevant information that the Commissioner requires."

Sec. 39. G.S. 58-21-20(a)(2) reads as rewritten:

"(2) Qualifies under one of the following subdivisions:

- a. Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction, which equals either:
 1. this This State's minimum capital and surplus requirements under ~~G.S. 58-7-75~~, G.S. 58-7-75, or
 2. Fifteen million dollars (\$15,000,000),
whichever is greater, except that nonadmitted insurers already qualified under this Article must have ten million dollars (\$10,000,000) by December 31, 1991, twelve million five hundred thousand dollars (\$12,500,000) by December 31, 1992, and fifteen million dollars (\$15,000,000) by December 31, 1993.
The requirements of this sub-subdivision may be satisfied by an insurer possessing less than the commitment capital and surplus upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of

management, capital and surplus of any parent company, company underwriting profit and investment income trends, and the insurer's record and reputation within the industry. In no event shall the Commissioner make an affirmative finding of acceptability when the insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000).

In addition, an alien insurer qualifies under this subdivision if it maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, in an amount not less than ~~one million five hundred thousand dollars (\$1,500,000)~~ two million five hundred thousand dollars (\$2,500,000) for the protection of all of its policyholders in the ~~United States~~ United States, and ~~such~~ the trust fund consists of cash, securities, letters of credit, or of investment of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this State. ~~Such~~ The trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall have an expiration date which at no time shall be less than five years; or

- b. In the case of any Lloyd's plans or other similar unincorporated group of ~~alien~~ individual insurers, maintains a trust fund of not less than fifty million dollars (\$50,000,000) as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and ~~such~~ the trust shall likewise comply with the terms and conditions established in subdivision (2)a. of this section for alien insurers; and
- c. In the case of an 'insurance exchange' created by the laws of individual states, maintain capital and surplus, or the substantial equivalent thereof, of not less than ~~fifteen million dollars (\$15,000,000)~~ fifty million dollars (\$50,000,000) in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than ~~one million five hundred thousand dollars~~

~~(\$1,500,000), three million dollars (\$3,000,000). In the event~~ If the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subdivision (2)a. of this section."

Sec. 40. Article 30 of Chapter 58 of the General Statutes is amended by adding a new section to read:

" § 58-30-12. Duty to report insurer impairment; violations; penalties.

(a) As used in this section:

- (1) 'Chief executive officer', as used in subsection (b) of this section, means the person, irrespective of title, designated by the board of directors or trustees of an insurer as the person charged with administering and implementing an insurer's policies and procedures.
- (2) 'Impaired', as used in subsections (b) and (c) of this section, means a financial condition in which the assets of an insurer are less than the sum of the insurer's minimum required capital, minimum required surplus, and all liabilities as determined in accordance with the requirements for the preparation and filing of a financial statement under G.S. 58-2-165 and under other provisions of this Chapter.
- (3) 'Insolvent', as used in subsection (c) of this section, has the same meaning as set forth in G.S. 58-30-10(13).

(b) Whenever an insurer is impaired, its chief executive officer shall, as soon as is reasonably possible, notify the Commissioner in writing of the impairment and shall at the same time notify in writing all of the members of the board of directors or trustees of the insurer, if the chief executive officer knows or has reason to know of the impairment. An officer, director, or trustee of an insurer shall notify the chief executive officer of the impairment of the insurer if the officer, director, or trustee knows or has reason to know that the insurer is impaired. Any person who knowingly violates this subsection shall, upon conviction, be guilty of a misdemeanor and fined not more than fifty thousand dollars (\$50,000) or imprisoned for not more than two years, or both.

(c) Any person who willfully:

- (1) Conceals any property belonging to an insurer; or
- (2) Transfers or conceals in contemplation of a delinquency proceeding the person's own property or property belonging to an insurer; or
- (3) Conceals, destroys, mutilates, alters, or makes a false entry in any document that affects or relates to the property of an insurer or withholds any such document from a receiver,

trustee, or other officer of a court entitled to its possession;
or

- (4) Gives, obtains, or receives a thing of value for acting or
forbearing to act in any court proceedings;

and any such act results in or contributes to an insurer becoming
impaired or insolvent; shall be guilty of a Class H felony."

Sec. 41. G.S. 58-30-15(c) reads as rewritten:

"(c) In addition to other grounds for jurisdiction provided by the laws of this State, the Court has jurisdiction over a person served pursuant to Chapter 1A of the General Statutes or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this State:

- (1) If the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in any action on or incident to the obligation; or
- (2) If the person served is a reinsurer who has at any time entered into a contract of reinsurance with an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract; or
- (3) If the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence, in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from such a relationship with the ~~insurer~~, insurer; or
- (4) If the person served is or was, when the delinquency proceeding was begun against the insurer, holding assets in which the receiver claims an interest on behalf of the insurer, in any action concerning the assets; or
- (5) If the person served is obligated to the insurer in any way whatsoever, in any action on or incident to the obligation."

Sec. 42. Article 30 of Chapter 58 of the General Statutes is amended by adding a new section to read:

" § 58-30-22. Powers of Commissioner and receiver to examine or audit books or records.

(a) As used in this section, 'person' includes an agent of the insurer; a broker, ceding or assuming reinsurer, or reinsurance intermediary that has done business with the insurer; or any affiliate of the insurer.

(b) In addition to other powers granted under this Chapter, the Commissioner in any supervision proceeding under this Article and a

receiver in any delinquency proceeding under this Article has the power to examine or audit the books or records of any person insofar as those books or records relate to the business activities of the insurer that is under supervision or subject to a delinquency proceeding.

(c) In any examination or audit authorized under this section, the person examined or audited shall reimburse the Commissioner or receiver for the cost of the examination or audit."

Sec. 43. G.S. 58-30-60(b) reads as rewritten:

"(b) The Commissioner may consider any or all of the following standards to determine whether the continued operation of any licensed insurer is hazardous to its policyholders, creditors, or the general public:

- (1) Adverse findings reported in financial condition and market conduct examination reports;
- (2) The NAIC Insurance Regulatory Information System and its related reports;
- (3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income that could lead to an impairment of capital and surplus;
- (4) Whether an insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;
- (5) The ability of an assuming reinsurer to perform and whether the ceding insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus, after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
- (6) Whether an insurer's operating loss in the last 12-month period or any shorter time, including net capital gain or loss, changes in nonadmitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of the insurer's remaining policyholders' surplus in excess of the minimum required;
- (7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or any other obligation;
- (8) Contingent liabilities, pledges, or guaranties that either individually or collectively involve a total amount that in the Commissioner's opinion may affect an insurer's solvency;

- (9) Whether any controlling person of an insurer is delinquent in the transmitting to or payment of net premiums to the insurer;
- (10) The age and collectibility of receivables;
- (11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess or demonstrate the competence, fitness, or reputation considered by the Commissioner to be necessary to serve the insurer in that position;
- (12) Whether the management of an insurer has failed to respond to the Commissioner's inquiries about the condition of the insurer or has furnished false and misleading information in response to an inquiry by the Commissioner;
- (13) Whether the management of an insurer has filed any false or misleading sworn financial statement, has released a false or misleading financial statement to a lending institution or to the general public, or has made a false or misleading entry or omitted an entry of material amount in the insurer's books;
- (14) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; or
- (15) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems.

To determine an insurer's financial condition under this Article, the Commissioner may: disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding; make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates of an insurer; refuse to recognize the stated value of accounts receivable if the insurer's ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

If upon examination or at any other time the Commissioner has reasonable cause to believe that any domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if

~~such~~ the domestic insurer gives its consent, then the Commissioner shall upon ~~his~~ the Commissioner's determination:

- (1) Notify the insurer of ~~his~~ that determination; and
- (2) Furnish to the insurer a written list of the Commissioner's requirements to abate ~~his~~ that determination.

The written list may include requirements that the insurer: reduce the total amount of present and potential liability for policy benefits by reinsurance; reduce, suspend, or limit the volume of insurance being accepted or renewed; reduce general insurance and commission expenses by specified methods; increase its capital and surplus; suspend or limit its declaration and payment of dividends to its stockholders or policyholders; file reports in a form acceptable to the Commissioner concerning the market value of its assets; limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commissioner considers to be necessary; document the adequacy of premium rates in relation to the risks insured; or file, in addition to regular annual financial statements, interim financial reports on the form adopted by the NAIC or on such format prescribed by the Commissioner. Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, the Commissioner may include in ~~his~~ the list of requirements ~~such~~ any rate adjustments for any kinds of insurance written by the insurer that the Commissioner considers necessary to improve the financial condition of the insurer."

Sec. 44. Article 30 of Chapter 58 of the General Statutes is amended by adding a new section to read:

" § 58-30-62. Administrative supervision of insurers.

(a) As used in this section, an insurer has 'exceeded its powers' when it: has refused to permit examination of its books, papers, accounts, records or affairs by the Commissioner; has in violation of G.S. 58-7-50 removed from this State books, papers, accounts or records necessary for an examination of the insurer; has failed to comply promptly with applicable financial reporting statutes or rules and related Department requests; continues to transact the business of insurance after its license has been revoked, suspended, or not renewed by the Commissioner; by contract or otherwise, has unlawfully, or has in violation of an order of the Commissioner, or has without first having obtained any legally required written approval of the Commissioner, totally reinsured its entire outstanding business or merged or consolidated substantially its entire property or business with another insurer; has engaged in any transaction in which it is not authorized to engage under the laws of this State; or has refused to comply with a lawful order of the Commissioner. As used in this

section, 'Commissioner' includes an authorized representative or designee of the Commissioner.

(b) This section applies to all domestic insurers and any other insurer doing business in this State whose state of domicile has asked the Commissioner to apply the provisions of this section to that insurer.

(c) An insurer may be subject to administrative supervision by the Commissioner if upon examination or at any other time it appears to the Commissioner that the insurer: has exceeded its powers; has failed to comply with applicable provisions of this Chapter; is conducting its business in a manner that is hazardous to the public or to its insureds; or consents to administrative supervision.

(d) If the Commissioner determines that the conditions set forth in subsection (c) of this section exist, the Commissioner shall: notify the insurer of that determination; furnish to the insurer a written list of the requirements to abate those conditions; and notify the insurer that it is under the supervision of the Commissioner and that the Commissioner is applying and effectuating the provisions of this section.

(e) If placed under administrative supervision, the insurer shall have 60 days, or a different period of time determined by the Commissioner, to comply with the requirements of the Commissioner under this section. If the Commissioner determines after notice and hearing that the conditions giving rise to the supervision still exist at the end of the supervision period specified in this subsection, the Commissioner may extend the period; or if the Commissioner determines that none of the conditions giving rise to the supervision exist, the Commissioner shall release the insurer from supervision.

(f) Notwithstanding any other provision of law and except as set forth in this section, all proceedings, hearings, notices, correspondence, reports, records, and other information in the possession of the Commissioner or the Department relating to the supervision of any insurer are confidential. The Department shall have access to such proceedings, hearings, notices, correspondence, reports, records, or other information as permitted by the Commissioner. The Commissioner may open the proceedings or hearings or disclose the notices, correspondence, reports, records, or information to a department, agency or instrumentality of this or another state of the United States if the Commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States. The Commissioner may open the proceedings or hearings or make public the notices, correspondence, reports, records, or other information if the Commissioner considers that it is in the best interest of the insurer, its

insureds or creditors, or the general public. This section does not apply to hearings, notices, correspondence, reports, records, or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction.

(g) During the period of supervision, the Commissioner shall serve as the administrative supervisor. The Commissioner may provide that the insurer shall not do any of the following during the period of supervision, without the Commissioner's prior approval: dispose of, convey, or encumber any of its assets or its business in force; withdraw from any of its bank accounts; lend or invest any of its funds; transfer any of its property; incur any debt, obligation, or liability; merge or consolidate with another company; establish new premiums or renew any policies; enter into any new reinsurance contract or treaty; terminate, surrender, forfeit, convert, or lapse any insurance coverage, except for nonpayment of premiums due; release, pay, or refund premium deposits, accrued cash, or loan values, unearned premiums, or other reserves on any insurance coverage; make any material change in management; increase salaries or benefits of officers or directors or make preferential payment of bonuses, dividends, or other payments considered preferential; or make any other change in its operations that the Commissioner considers to be material.

(h) During the period of supervision the insurer may contest an action taken or proposed to be taken by the Commissioner, specifying why the action being complained of would not result in improving the insurer's condition.

(i) This section does not limit powers granted to the Commissioner by any other provision of law. This section does not preclude the Commissioner from initiating judicial proceedings to place an insurer in a delinquency proceeding under this Article, regardless of whether the Commissioner has previously initiated administrative supervision proceedings under this section or under G.S. 58-30-60 against the insurer. The determination as to actions under this section is in the Commissioner's discretion.

(j) Notwithstanding any other provision of law, the Commissioner may meet with a supervisor appointed under this section and with the attorney or other representative of the supervisor, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under the authority of this section, to carry out the Commissioner's duties under this section or for the supervisor to carry out the supervisor's duties under this section.

(k) There is no liability by, and no cause of action of any nature arises against, the Commissioner for any acts or omissions by the

Commissioner in the performance of the Commissioner's powers and duties under this section."

Sec. 45. Article 30 of Chapter 58 of the General Statutes is amended by adding a new subsection to read:

" § 58-30-127. Duties of agents.

(a) Every person who receives notice in the form prescribed in G.S. 58-30-125 that an insurer that person represents as an agent is the subject of a liquidation order shall, upon request of the liquidator and within 60 days after receipt of the request, provide to the liquidator the information in the agent's records related to any policy issued by the insurer through the agent; and if the agent is a general agent, the information in the general agent's records related to any policy issued by the insurer through a subagent under contract with the general agent, including the name and address of the subagent.

(b) For the purpose of this section, a policy is issued through an agent if the agent has a property interest in the expiration of the policy or if the agent has had in the agent's possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another person.

(c) Any agent failing to provide information to the liquidator as required by this section is to be subject to G.S. 58-2-70.

(d) The provisions of this section are in addition to any other duties in this Chapter that are placed on agents."

Sec. 46. G.S. 58-30-140 is amended by adding a new subsection to read:

"(d) Every person receiving any property from the insurer or any benefit thereof as the result of a fraudulent transfer under subsection (a) of this section is personally liable therefor and is bound to account to the liquidator."

Sec. 47. G.S. 58-30-160 reads as rewritten:

" § 58-30-160. ~~Setoffs and counterclaims.~~ Setoffs.

(a) Mutual debts or mutual ~~credits~~ credits, whether arising out of one or more contracts between the insurer and another person in connection with any action or proceeding under this Article shall be set off and the balance only shall be allowed or paid, except as provided in ~~subsection (b)~~ subsections (b), (d), and (e) of this section and in G.S. 58-30-175.

(b) No setoff or ~~counterclaim~~ shall be allowed in favor of any person where:

(1) The obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

- (2) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;
- (3) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; ~~or~~
- (4) The obligation of the person is to pay earned premiums to the ~~insurer,~~ insurer;
- (5) The obligation of the insurer is owed to an affiliate of the person, or to any other entity or association other than the person;
- (6) The obligation of the person is owed to an affiliate of the insurer, or to any other entity or association other than the insurer;
- (7) The obligations between the person and the insurer arise out of transactions where either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations;
- (8) The obligation of the person is to pay to the insurer sums held in a fiduciary capacity for the insurer; or
- (9) The person alone or together with any other member of its insurance company holding system owns fifty percent (50%) or more of the voting stock of the insurer.

(c) A setoff shall be permitted to local agents against agents' balances otherwise payable to the domiciliary or ancillary receiver for the amount expended by ~~such~~ the agents to replace insurance coverage of their insureds and the reasonable expenses incident thereto as a result of any domestic, foreign or alien insurer being placed in delinquency proceedings. Agents claiming ~~such~~ a setoff shall within 60 days of replacing ~~such~~ coverage provide a verified accounting of the replacement of ~~such~~ the insurance to the domiciliary receiver, the ancillary receiver, if any, and the North Carolina Insurance Guaranty Association or similar organization in the state of residence of the policyholder. The verified accounting shall include the name of the agent, the name of the insured, the policy number, the replacement policy number, the cost of the replacement policy, the amount of unearned premium under each policy as to which setoff is claimed, any claimed expenses and a verification that the accounting has been provided to each of the persons and entities described herein. Unearned premiums set off as provided above in any amount shall be deemed paid in full by the insurer and no person shall have a claim

for such the unearned premiums against the North Carolina Insurance Guaranty Association or similar organization in the state of residence of the policyholder.

(d) The receiver shall provide persons with accounting statements identifying debts which are currently due and payable. Where a person owes to the insurer currently due and payable balances, against which the person asserts setoff of mutual credits which may become due and payable from the insurer in the future, the person shall promptly pay to the receiver the currently due and payable amount; provided that, notwithstanding any other provision of this Article, the receiver shall promptly and fully refund, to the extent of the person's prior payments, any mutual credits that become due and payable to the person by the insurer.

(e) Notwithstanding any other provision of this section, a setoff of sums due on obligations in the nature of those set forth in subdivision (b)(7) of this section shall be allowed for those sums accruing from business written where the contracts were entered into, renewed, or extended with the express written approval of the insurance regulator of the state of domicile of the now insolvent insurer, when in the judgment of the regulator it was necessary to provide reinsurance in order to prevent or mitigate a threatened impairment or insolvency of the insurer in connection with the exercise of the regulator's official responsibilities."

Sec. 48. Section 47 of this act becomes effective January 1, 1992, and applies to all contracts entered into, renewed, extended, or amended on or after that date, and to debts or credits arising from any business written or transactions occurring on or after January 1, 1992, pursuant to any contract, including those in existence prior to January 1, 1992; and shall supersede any agreements or contractual provisions that might be construed to enlarge the setoff rights of any person under any contract with the insurer. For purposes of this section any change in the terms of, or consideration from, any such contract shall be deemed to be an amendment.

Sec. 49. The title of Article 34 of Chapter 58 of the General Statutes reads as rewritten:

"~~Managing General Agents.~~ Agency and Management Contracts."

Sec. 50. G.S. 58-34-1 is repealed.

Sec. 51. Article 34 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-34-2. Managing general agents."

(a) As used in this Article:

(1) 'Control', including the terms 'controlling', 'controlled by', and 'under common control', means the direct or indirect possession of the power to direct or cause the

direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(2) 'Insurer' means a domestic insurer but does not mean a reciprocal regulated under Article 15 of this Chapter.

(3) 'Managing general agent' or 'MGA' means any person who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer (including the management of a separate division, department, or underwriting office) and acts as an agent for the insurer, whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with persons under common control, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year. 'MGA' does not mean an employee of the insurer; an underwriting manager who, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, is subject to Article 19 of this Chapter, and whose compensation is not based on the volume of premiums written; or a person who, under Article 15 of this Chapter, is designated and authorized by subscribers as the attorney-in-fact for a reciprocal having authority to obligate them on reciprocal and other insurance contracts.

(4) 'Qualified actuary' means a person who meets the standards of a qualified actuary as specified in the NAIC Annual Statement Instructions, as amended or clarified by rule, order, directive, or bulletin of the Department, for the type of insurer for which the MGA is establishing loss reserves.

(5) 'Underwrite' means the authority to accept or reject risk on behalf of the insurer.

(b) Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making

specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect. The Commissioner may determine upon application that any person does not or will not upon the taking of some proposed action control another person. The Commissioner may prospectively revoke or modify that determination, after the notice and opportunity to be heard, whenever, in the Commissioner's judgment, revocation, or modification is consistent with this Article.

(c) No person shall act as an MGA with respect to risks located in this State for an insurer unless that person is a licensed agent in this State. No person shall act as an MGA representing an insurer with respect to risks located outside of this State unless that person is licensed as an agent in this State; and the license may be a nonresident license. The Commissioner may require a bond in an amount acceptable to the Commissioner for the protection of the insurer. The Commissioner may require the MGA to maintain an errors and omissions policy.

(d) No person acting as an MGA shall place business with an insurer unless there is in force a written contract between the MGA and the insurer that sets forth the responsibilities of each party and, where both parties share responsibility for a particular function, specifies the division of such responsibilities, and that contains the following minimum provisions:

- (1) The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination.
- (2) The MGA will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.
- (3) All funds collected for the account of an insurer will be held by the MGA in a fiduciary capacity in a bank that is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer. The MGA may retain no more than three months estimated claims payments and allocated loss adjustment expenses.
- (4) Separate records of business written by the MGA will be maintained. The insurer shall have access to and right to copy all accounts related to its business in a form usable by the insurer, and the Commissioner shall have access to all books, bank accounts, and records of the MGA in a form usable to the Commissioner. The records shall be retained according to the provisions of 11 NCAC 11C.0105.

- (5) The contract may not be assigned in whole or part by the MGA.
- (6) Appropriate underwriting guidelines, including: the maximum annual premium volume; the basis of the rates to be charged; the types of risks that may be written; maximum limits of liability; applicable exclusions; territorial limitations; policy cancellation provisions; and the maximum policy period. The insurer shall have the right to cancel or nonrenew any policy of insurance subject to applicable laws and rules.
- (7) If the contract permits the MGA to settle claims on behalf of the insurer:
 - a. All claims must be reported to the MGA in a timely manner.
 - b. A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim: has the potential to exceed an amount determined by the insurer and approved by the Commissioner; involves a coverage dispute; may exceed the MGA's claims settlement authority; is open for more than six months; or is closed by payment of an amount set by the insurer and approved by the Commissioner.
 - c. All claim files will be the joint property of the insurer and MGA. However, upon an order of liquidation of the insurer the files shall become the sole property of the insurer or its estate; the MGA shall have reasonable access to and the right to copy the files on a timely basis.
 - d. Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.
- (8) Where electronic claims files are in existence, the contract must address the timely transmission of the data.
- (9) If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves, controlling claim payments, or by any other manner, interim profits will not be paid to the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business and

not until the profits have been verified under subsection (m) of this section.

(10) The MGA shall not:

- a. Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;
- b. Commit the insurer to participate in insurance or reinsurance syndicates;
- c. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed;
- d. Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent (1%) of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;
- e. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer, without the insurer's prior approval. If prior approval is given, a report must be promptly forwarded to the insurer;
- f. Permit its subproducer to serve on the insurer's board of directors;
- g. Jointly employ an individual who is employed with the insurer; or
- h. Appoint a sub-MGA.

(e) An insurer shall have on file by June 1 of each year an audited financial report of each MGA with which it is doing business. The report shall include the opinion of an independent certified public accountant, report the financial position of the MGA as of the most recent year-end and the results of its operations and cash flows, and include appropriate notes to financial statements. The insurer shall provide a copy of the report to the Commissioner within 15 days of receipt by the insurer.

(f) If an MGA establishes loss reserves, the insurer shall provide with its annual statement, in addition to any other required statement of actuarial opinion, the statement of a qualified actuary attesting to the adequacy of loss reserves established on business produced by the

MGA. The statement shall comply in all respects with the NAIC Annual Statement Instructions regarding the Statement of Actuarial Opinion.

(g) The insurer shall periodically, at least semiannually, conduct an on-site review of the underwriting and claims processing operations of the MGA. The insurer shall prepare and maintain a written report on the review and make it available to the Commissioner upon the Commissioner's request.

(h) Binding authority for all reinsurance contracts, except those contracts expressly permitted under sub-subdivision (d)(10)a. of this section, or participation in insurance or reinsurance syndicates, shall rest with an officer of the insurer, who shall not be affiliated with the MGA.

(i) Within 15 days after entering into or termination of a contract with an MGA, the insurer shall provide written notification of the appointment or termination to the Commissioner. Notices of appointment of an MGA shall include a copy of the contract, a statement of duties that the MGA is expected to perform on behalf of the insurer, the kinds of insurance for which the MGA is to be authorized to act, whether any affiliation exists between the insurer and the MGA and the basis for the affiliation, and any other information the Commissioner may request. The Commissioner may prescribe the form to be used for notification of the information required by this item.

(j) The Commissioner shall disapprove any such contract that:

- (1) Does not contain the required contract provisions specified in subsection (d) of this section;
- (2) Subjects the insurer to excessive charges for expenses or commission;
- (3) Vests in the MGA any control over the management of the affairs of the insurer to the exclusion of the board of directors of the insurer;
- (4) Is entered into with any person if the person or its officers and directors are of known bad character or have been affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business relationships with any person known to have been involved in the improper manipulation of assets, accounts, or reinsurance; or
- (5) Is determined by the Commissioner to contain provisions that are not fair and reasonable to the insurer.

Failure of the Commissioner to disapprove any such contract within 30 days after the contract has been filed with the Commissioner constitutes the Commissioner's approval of the contract. An insurer

may continue to accept business from such person until the Commissioner disapproves the contract. Any disapproval shall be in writing. The Commissioner may, after a hearing held under G.S. 58-2-50, withdraw approval of any contract the Commissioner has previously approved upon finding that the basis of the original approval no longer exists or that the contract has, in actual operation, shown itself to be subject to disapproval on any of the grounds in this subsection.

(k) An insurer shall review its books and records each quarter to determine if any agent has become an MGA. If the insurer determines that an agent has become an MGA, the insurer shall promptly notify the agent of that determination and the insurer and agent must fully comply with the provisions of this Article within 15 days.

(l) An insurer shall not appoint to its board of directors an officer, director, employee, subagent, or controlling shareholder of its MGAs. This subsection does not apply to relationships governed by Article 19 of this Chapter or, if applicable, G.S. 58-7-157.

(m) The acts of an MGA are considered to be the acts of the insurer on whose behalf it is acting. An MGA may be examined by the Commissioner under G.S. 58-2-131, 58-2-132, or 58-2-133 as if it were an insurer.

(n) If the Commissioner finds after a hearing conducted in accordance with G.S. 58-2-50 that any person has violated any provision of this Article, the Commissioner may order:

- (1) For each separate violation, a civil penalty of one thousand dollars (\$1,000) to be credited to the General Fund;
- (2) Revocation or suspension of the agent's license; or
- (3) The MGA to reimburse the insurer or the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this Article committed by the MGA.

(o) Nothing in this section affects the Commissioner's right to impose any other penalties provided for in this Chapter. Nothing in this Article limits or restricts the rights of policyholders, claimants, and creditors."

Sec. 52. G.S. 58-34-5(c) reads as rewritten:

"(c) The standards for approval shall be as set forth under G.S. 58-34-1, G.S. 58-34-2(d)(5)."

Sec. 53. G.S. 58-34-10(b) reads as rewritten:

"(b) There shall be exempted from the filing requirement of this section contracts by groups of affiliated insurers on a pooled funds basis or service company management basis, where costs to the individual member insurers are charged on an actually incurred or

closely estimated basis. However, these contracts must be reduced to written form.

~~G.S. 58-34-5, 58-34-10, and 58-34-15 do not apply to any power of attorney or other authority authorized by G.S. 58-138."~~

Sec. 54. G.S. 58-34-15(a) reads as rewritten:

"(a) The Commissioner must disapprove any ~~such~~ management contract or service agreement filed under G.S. 58-34-10 if, at any time, ~~he~~ the Commissioner finds:

- (1) That the service or management charges are based upon criteria unrelated either to the managed insurer's profits or to the reasonable customary and usual charges for such services or are based on factors unrelated to the value of such services to the insurer; or
- (2) That management personnel or other employees of the insurer are to be performing management functions and receiving any remuneration therefor through the management or service contract in addition to the compensation by way of salary received directly from the insurer for their services; or
- (3) That the contract would transfer substantial control of the insurer or any of the powers vested in the board of directors, by statute, articles of incorporation, or bylaws, or substantially all of the basic functions of the insurance company management; or
- (4) That the contract contains provisions that would be clearly detrimental to the best interest of policyholders, stockholders, or members of the insurer; or
- (5) That the officers and directors of the management firm are of known bad character or have been affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person ~~or persons~~ known to have been involved in the improper manipulation of assets, accounts, or reinsurance."

Sec. 55. The title of Article 62 of Chapter 58 of the General Statutes reads as rewritten:

~~"Life and Accident~~ and Health Insurance Guaranty Association."

Sec. 56. Article 62 of Chapter 58 of the General Statutes is amended by adding the following new sections:

" § 58-62-2. Title.

This Article shall be known and may be cited as the North Carolina Life and Health Insurance Guaranty Association Act.

" § 58-62-6. Purpose.

(a) The purpose of this Article is to protect, subject to certain limitations, the persons specified in G.S. 58-62-21(a) against failure in the performance of contractual obligations, under life and health insurance policies and annuity contracts specified in G.S. 58-62-21(b), because of the delinquency of the member insurer that issued the policies.

(b) To provide this protection, an association of insurers is created to pay benefits and to continue coverages as limited herein, and members of the Association are subject to assessment to provide funds to carry out the purpose of this Article.

"§ 58-62-11. Construction.

This Article shall be liberally construed to effect the purpose under G.S. 58-62-6, which shall constitute an aid and guide to interpretation.

"§ 58-62-16. Definitions.

As used in this Article:

- (1) 'Account' means any of the two accounts created under G.S. 58-62-26.
- (2) 'Association' means the North Carolina Life and Health Insurance Guaranty Association created under G.S. 58-62-26.
- (3) 'Board' means the board of directors of the Association established under G.S. 58-62-31.
- (4) 'Contractual obligation' means any obligation under a policy or certificate under a group policy, or part thereof, for which coverage is provided under G.S. 58-62-21.
- (5) 'Covered policy' means any policy within the scope of this Article under G.S. 58-62-21.
- (6) 'Delinquent insurer' means an impaired insurer or an insolvent insurer; and 'delinquency' means an insurer impairment or insolvency.
- (7) 'Health insurance' includes accident and health insurance, accident insurance, and disability insurance.
- (8) 'Impaired insurer' means a member insurer that, after the effective date of this Article, is not an insolvent insurer, and (i) is deemed by the Commissioner to be potentially unable to fulfill its contractual obligations or (ii) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.
- (9) 'Insolvent insurer' means a member insurer that, after the effective date of this Article, is placed under an order of liquidation with a finding of insolvency by a court of competent jurisdiction.

- (10) 'Insurance regulator' means the official or agency of another state that is responsible for the regulation of a foreign insurer.
- (11) 'Member insurer' means any insurer licensed or that holds a license to transact in this State any kind of insurance for which coverage is provided under G.S. 58-62-21; and includes any insurer whose license in this State may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include an entity governed by Articles 65 through 67 of this Chapter; fraternal order or fraternal benefit society; mandatory State pooling plan; mutual assessment company or any entity that operates on an assessment basis; insurance exchange; or any entity similar to any of the foregoing.
- (12) 'Moody's Corporate Bond Yield Average' means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.
- (13) 'Person' includes an individual, corporation, company, partnership, association, or aggregation of individuals.
- (14) 'Plan' means the plan of operation established under G.S. 58-62-46.
- (15) 'Policy' includes a contract of insurance and an annuity contract.
- (16) 'Premiums' means amounts received in any calendar year on covered policies less premiums, considerations, and deposits returned thereon, and less dividends and experience credits thereon. 'Premiums' does not include any amounts received for any policies or for the parts of any policies for which coverage is not provided under G.S. 58-62-21(b); except that assessable premium shall not be reduced on account of G.S. 58-62-21(c)(3) relating to interest limitations and G.S. 58-62-21(d)(2) relating to limitations with respect to any one individual, any one participant, and any one contract holder.
- (17) 'Resident' means any person who resides in this State when a member insurer is determined to be a delinquent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business.
- (18) 'Unallocated annuity contract' means any annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity

benefits guaranteed to an individual by an insurer under the contract or certificate.

" § 58-62-21. Coverage and limitations.

(a) This Article provides coverage for the policies and contracts specified in subsection (b) of this section:

- (1) To persons who, regardless of where they reside (except for nonresident certificate holders under group policies), are the beneficiaries, assignees, or payees of the persons covered under subdivision (2) of this subsection, and
- (2) To persons who are owners or certificate holders under the policies, or in the case of unallocated annuity contracts to the persons who are the contract holders, and who are residents of this State, or who are not residents of this State, but only under all of the following conditions: (i) the insurers that issued the policies are domiciled in this State; (ii) the insurers never held a license in the states in which the persons reside; (iii) the states have associations similar to the association created by this Article; and (iv) the persons are not eligible for coverage by the associations.

(b) This Article provides coverage to the persons specified in subsection (a) of this section for direct, nongroup life, health, annuity, and supplemental policies, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this Article. Annuity contracts and certificates under group annuity contracts include guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.

(c) This Article does not provide coverage for:

- (1) Any part of a policy not guaranteed by the insurer, or under which the risk is borne by the policyholder;
- (2) Any policy or contract of reinsurance, unless assumption certificates have been issued;
- (3) Any part of a policy to the extent that the rate of interest on which it is based:
 - a. Averaged over the period of four years before the date on which the Association becomes obligated with respect to the policy, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for a lesser period if the

policy was issued less than four years before the Association became obligated; and

- b. On and after the date on which the Association becomes obligated with respect to the policy, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

- (4) Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or similar entity under:

a. A multiple employer welfare arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

b. A minimum premium group insurance plan;

c. A stop-loss group insurance plan; or

d. An administrative services only contract;

- (5) Any part of a policy to the extent that it provides dividends or experience-rating credits, or provides that any fees or allowances be paid to any person, including the policyholder, in connection with the service to or administration of the policy;

- (6) Any policy issued in this State by a member insurer at a time when it was not licensed to issue the policy in this State;

- (7) Any unallocated annuity contract issued to an employee benefit plan protected under the federal Pension Benefit Guaranty Corporation; and

- (8) Any part of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery.

(d) The benefits for which the Association is liable do not, in any event, exceed the lesser of:

- (1) The contractual obligations for which the insurer is liable or would have been liable if it were not a delinquent insurer; or

- (2) With respect to any one individual, regardless of the number of policies, three hundred thousand dollars (\$300,000) for all benefit, including cash values.

(e) In no event is the Association liable to expend more than three hundred thousand dollars (\$300,000) in the aggregate with respect to any one individual under this section.

" § 58-62-26. *Creation of the Association.*

(a) There is created a nonprofit legal entity to be known as the North Carolina Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the Association as a condition of their authority to transact insurance in this State. The Association shall perform its functions under the Plan established and approved under G.S. 58-62-46 and shall exercise its powers through the Board established under G.S. 58-62-31. For purposes of administration and assessment, the Association shall maintain two accounts:

(1) The life insurance and annuity account, which includes the following subaccounts:

- a. Life insurance account;
- b. Annuity account.

(2) The health insurance account.

(b) The Association is under the immediate supervision of the Commissioner and is subject to the applicable provisions of this Chapter. Meetings or records of the Association may be opened to the public upon majority vote of the Board.

" § 58-62-31. *Board of directors.*

(a) The Board shall consist of not less than five nor more than nine member insurers serving terms as established in the Plan. The members of the Board shall be selected by member insurers, subject to the Commissioner's approval. Vacancies on the Board shall be filled for the remaining period of the term by a majority vote of the remaining Board members, subject to the Commissioner's approval. To select the initial Board, and initially organize the Association, the Board's predecessor shall notify all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting, each member insurer is entitled to one vote in person or by proxy. If the Board is not selected within 60 days after notice of the organizational meeting, the Commissioner may appoint the initial members.

(b) In approving selections or in appointing members to the Board, the Commissioner shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the Board may be reimbursed from the assets of the Association for expenses they incur as members of the Board, but they shall not otherwise be compensated by the Association for their services.

" § 58-62-36. *Powers and duties of the Association.*

(a) If a member insurer is an impaired domestic insurer, the Association may, subject to any conditions imposed by the Association and approved by the Commissioner that do not impair the contractual obligations of the impaired insurer and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:

- (1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies of the impaired insurer;
- (2) Provide such monies, pledges, notes, guarantees, or other means as are proper to carry out subdivision (1) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under subdivision (1) of this subsection; or
- (3) Lend money to the impaired insurer.

(b) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims in a timely manner, then subject to the preconditions specified in subsection (c) of this section, the Association shall, in its discretion, either:

- (1) Take any of the actions specified in subsection (a) of this section, subject to the conditions therein; or
- (2) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policyowners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the Association and approved by the Commissioner.

(c) The Association is subject to the requirements of subsection (b) of this section only if:

- (1) The laws of the impaired insurer's state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all the payments and expenses, have been repaid to the guaranty associations or a plan of repayment by the impaired insurer has been approved by the guaranty associations, the delinquency proceeding shall not be dismissed; neither the impaired insurer nor its assets may be returned to the control of its shareholders or private management; and the impaired insurer may not solicit or accept new business or have any suspended or revoked license restored; and

- (2) The impaired insurer is a domestic insurer that has been placed under an order of rehabilitation by a court of competent jurisdiction in this State; or the impaired insurer is a foreign or alien insurer that has been prohibited from soliciting or accepting new business in this State, its license has been suspended or revoked in this State, and a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by that state's insurance regulator.

(d) If a member insurer is an insolvent insurer, the Association shall, in its discretion, either:

- (1) Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, the policies of the insolvent insurer; or
- (2) Assure payment of the contractual obligations of the insolvent insurer; and
- (3) Provide such monies, pledges, guarantees, or other means as are reasonably necessary to discharge those duties; or
- (4) With respect only to life and health insurance policies, provide benefits and coverages in accordance with subsection (e) of this section.

(e) When proceeding under subdivision (b)(2) or (d)(4), the Association shall, with respect to only life and health insurance policies:

- (1) Assure payment of benefits for premiums identical to the premiums and benefits (except for terms of conversion and renewability) that would have been payable under the policies of the insolvent insurer, for claims incurred:
- a. With respect to group policies, not later than the earlier of the next renewal date under the policies or 45 days, but in no event less than 30 days after the date on which the Association becomes obligated with respect to the policies;
- b. With respect to individual policies, not later than the earlier of the next renewal date (if any) under the policies or one year, but in no event less than 30 days from the date on which the Association becomes obligated with respect to the policies;
- (2) Make diligent efforts to provide all known insureds or group policyholders with respect to group policies 30 days' notice of the termination of the benefits provided; and
- (3) With respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a

group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subsection (f) of this section, if the insured had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(f) In providing the substitute coverage required under subdivision (e)(3) of this section, the Association may offer either to reissue the terminated coverage or to issue an alternative policy. An alternative or reissued policy shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy. The Association may reinsure any alternative or reissued policy.

(g) Alternative life or health insurance policies adopted by the Association are subject to the Commissioner's approval. The Association may adopt alternative policies of various types for future issuance without regard to any particular delinquency. Alternative policies shall contain at least the minimum statutory provisions required in this State and provide benefits that are not unreasonable in relation to the premium charged. The Association shall set the premium in accordance with a table of rates, which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but it shall not reflect any changes in the health of the insured after the original policy was last underwritten. Any alternative policy issued by the Association shall provide coverage of a type similar to that of the policy issued by the delinquent insurer, as determined by the Association.

(h) If the Association elects to reissue terminated coverage at a premium rate different from that charged under the terminated life or health insurance policy, the premium shall be set by the Association in accordance with the amount of insurance provided and the age and class of risk, subject to the approval of the Commissioner or by a court of competent jurisdiction.

(i) The Association's obligations with respect to coverage under any life or health insurance policy of the delinquent insurer or under any reissued or alternative policy cease on the date the coverage or policy is replaced by another similar policy by the policyholder, the insured, or the Association.

(j) When proceeding under subdivision (b)(2) of this section or under subsection (c) of this section with respect to any policy carrying

guaranteed minimum interest rates, the Association shall assure the payment or crediting of a rate of interest consistent with G.S. 58-62-21(c)(3).

(k) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or substitute coverage terminates the Association's obligations under the policy or coverage under this Article with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value that may be due under this Article.

(l) Premiums due for coverage after an entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the Association; and the Association is liable for unearned premiums owed to policyowners arising after the entry of the order.

(m) The protection provided by this Article does not apply where any similar guaranty protection is provided to residents of this State by the laws of the domiciliary state or jurisdiction of a delinquent foreign or alien insurer.

(n) In carrying out its duties under subsections (b) through (d) of this section, the Association may, subject to approval by the court:

(1) Impose permanent policy liens in connection with any guarantee, assumption, or reinsurance agreement, if the Association finds that the amounts that can be assessed under this Article are less than the amounts needed to assure full and prompt performance of the Association's duties under this Article, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of the permanent policy liens to be in the public interest;

(2) Impose temporary moratoria or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies, in addition to any contractual provisions for deferral of cash or policy loan value.

(o) If the Association fails to act within a reasonable period of time as provided in subdivision (b)(2) of this section and subsections (d) and (e) of this section, the Commissioner has the powers and duties of the Association under this Article with respect to delinquent insurers.

(p) The Association may render assistance and advice to the Commissioner, upon the Commissioner's request concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any delinquent insurer.

(q) The Association has standing to appear before any court in this State with jurisdiction over a delinquent insurer for which the

Association is or may become obligated under this Article. This standing extends to all matters germane to the powers and duties of the Association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies of the delinquent insurer and the determination of the policies and contractual obligations. The Association also has the right to appear or intervene before a court in another state with jurisdiction over a delinquent insurer for which the Association is or may become obligated or with jurisdiction over a third party against whom the Association may have rights through subrogation of the insurer's policyholders.

(r) Any person receiving benefits under this Article is considered to have been assigned the rights under, and any causes of action relating to, the covered policy to the Association to the extent of the benefits received because of this Article, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The Association may require an assignment to it of such rights and cause of action by any payee, policyowner, beneficiary, insured or annuitant as a condition precedent to the receipt of any right or benefits conferred by this Article upon the person. The subrogation rights of the Association under this subsection have the same priority against the delinquent insurer's assets as that possessed by the person entitled to receive benefits under this Article. In addition to other provisions of this subsection, the Association has all common-law rights of subrogation and any other equitable or legal remedy that would have been available to the delinquent insurer or holder of a policy with respect to the policy.

(s) The Association may:

- (1) Enter into contracts that are necessary or proper to carry out the provisions and purposes of this Article;
- (2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under G.S. 58-62-41 and to settle claims or potential claims against it;
- (3) Borrow money to effect the purposes of this Article; any notes or other evidence of indebtedness of the Association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;
- (4) Employ or retain persons that are necessary to handle the financial transactions of the Association, and to perform other functions that become necessary or proper under this Article;
- (5) Take legal action that may be necessary to avoid payment of improper claims;

- (6) Exercise, for the purposes of this Article and to the extent approved by the Commissioner, the powers of a domestic life or health insurer, but in no case may the Association issue insurance policies or annuity contracts other than those issued to perform its obligations under this Article.

(t) The Association may join an organization of one or more other state associations of similar purposes, in order to further the purposes of this Article and administer the powers and duties of the Association.

" § 58-62-41. Assessments.

(a) To provide the funds necessary to carry out the powers and duties of the Association, the Board shall assess the member insurers, separately for each account, at such time and for such amounts as the Board finds necessary. Assessments are due not less than 30 days after prior written notice to the member insurers and shall accrue interest at eight percent (8%) per annum on and after the due date.

(b) There shall be two classes of assessments, as follows:

- (1) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of G.S. 58-62-56(e). Class A assessments may be made whether or not they are related to a particular delinquent insurer.
- (2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the Association under G.S. 58-62-36 with regard to a delinquent insurer.

(c) The amount of any Class A assessment shall be determined by the Board and may or may not be prorated. If prorated, the Board may provide that it be credited against future Class B assessments. If not prorated, the assessment shall not exceed one hundred fifty dollars (\$150.00) per member insurer in any one calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula, which may be based on the premiums or reserves of the delinquent insurer or any other standard considered by the Board in its sole discretion to be fair and reasonable under the circumstances.

(d) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this State by each assessed member insurer or policies covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became delinquent, as the case may be, bears to the premiums received on business in this State for those calendar years by all assessed member insurers.

(e) Assessments for funds to meet the requirements of the Association with respect to a delinquent insurer shall not be made

until necessary to implement the purposes of this Article. Classification of assessments under subsection (b) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy.

(f) The Association may abate or defer, in whole or in part, the assessment of a member insurer if, in the Board's opinion, payment of the assessment would endanger the member insurer's ability to fulfill its contractual obligations. If an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section, recognizing that exact determinations may not always be possible.

(g) The total of all assessments upon a member insurer for the life and annuity account and for each subaccount thereunder shall not in any one calendar year exceed two percent (2%) and for the health account shall not in any one calendar year exceed two percent (2%) of the insurer's average premiums received in this State on the policies and contracts covered by the account during the three calendar years preceding the year in which an insurer became a delinquent insurer. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one year in either account an amount sufficient to carry out the Association's responsibilities, the necessary additional funds shall be assessed as soon thereafter as permitted by this Article.

(h) The Board may provide in the Plan a method of allocating funds among claims, whether relating to one or more delinquent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(i) If a one percent (1%) assessment for any subaccount of the life and annuity account in any one year does not provide an amount sufficient to carry out the Association's responsibilities, then under subsection (d) of this section, the Board shall access all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subsection (g) of this section.

(j) The Board may, by an equitable method as established in the Plan, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the Board finds is necessary to carry out during the coming year the obligations of the Association with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the Association and for future losses.

(k) It is proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this Article, to consider the amount reasonably necessary to meet its assessment obligations under this Article.

(l) The Association shall issue to each insurer paying an assessment under this Article, other than a Class A assessment, a certificate of contribution, in a form prescribed by the Commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in the form and for the amount, if any, and period of time as the Commissioner approves.

"§ 58-62-46. Plan of operation.

(a) The Association shall submit to the Commissioner a Plan and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The Plan and any amendments shall become effective upon the Commissioner's written approval or unless the Commissioner has not disapproved it within 30 days.

(b) If the Association fails to submit a suitable Plan within 120 days after the effective date of this Article or if at any time thereafter the Association fails to submit suitable amendments to the Plan, the Commissioner shall, after notice and hearing, adopt rules that are necessary or advisable to carry out the provisions of this Article. The rules shall continue in force until modified by the Commissioner or superseded by a Plan submitted by the Association and approved by the Commissioner.

(c) All member insurers shall comply with the Plan.

(d) The Plan shall, in addition to other requirements specified in this Article, establish:

- (1) Procedures for handling the assets of the Association;
- (2) The amount and method of reimbursing members of the Board under G.S. 58-62-31;
- (3) Regular places and times for meetings, including telephone conference calls, of the Board;
- (4) Procedures for records to be kept of all financial transactions of the Association, its agents, and the Board;
- (5) The procedures whereby selections for the Board will be made and submitted to the Commissioner;
- (6) Any additional procedures for assessments under G.S. 58-62-41;
- (7) Additional provisions necessary or proper for the execution of the powers and duties of the Association.

(e) The Plan may provide that any or all powers and duties of the Association, except those under G.S. 58-62-36(r) and G.S. 58-62-41, may be delegated to a corporation, association, or other organization that performs or will perform functions similar to those of the Association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the Association and shall be paid for its performance of any function of the Association. A delegation under this subsection is effective only with the approval of both the Board and the Commissioner, and may be made only to a corporation, association, or organization that extends protection not substantially less favorable and effective than that provided by this Article.

" § 58-62-51. Duties and powers of the Commissioner.

(a) In addition to other duties and powers specified in this Article, the Commissioner shall:

- (1) Upon request of the Board, provide the Association with a statement of the premiums in this State and any other appropriate states for each member insurer;
- (2) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer shall constitute notice to its shareholders, if any; the failure of the insurer to comply promptly with the demand does not excuse the Association from the performance of its powers and duties under this Article; and
- (3) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator as provided in Article 30 of this Chapter.

(b) The Commissioner may suspend or revoke, after notice and hearing, the license to transact insurance in this State of any member insurer that fails to pay an assessment when due or fails to comply with the Plan. As an alternative the Commissioner may levy a forfeiture on any member insurer that fails to pay an assessment when due. The forfeiture shall not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars (\$100.00) per month.

(c) Any action of the Board or the Association may be appealed to the Commissioner by any member insurer if the appeal is taken within 60 days of the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the Association and available to meet Association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member

company. No later than 20 days before each hearing, the appellant shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellee a written statement of the appellant's case and any evidence the appellant intends to offer at the hearing. No later than five days before the hearing, the appellee shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellant a written statement of the appellee's case and any evidence the appellee intends to offer at the hearing. Each hearing shall be recorded and transcribed. The cost of the recording and transcribing shall be borne equally by the appellant and appellee; however, upon any final adjudication the prevailing party shall be reimbursed for that party's share of the costs by the other party. Each party shall, on a date determined by the Commissioner or the Commissioner's designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or the Commissioner's designated hearing officer and serve on the other party, a proposed order. The Commissioner or the Commissioner's designated hearing officer shall then issue an order. Any final action or order of the Commissioner or the Commissioner's designated hearing officer is subject to judicial review under G.S. 58-2-75.

(d) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this Article.

" § 58-62-56. *Prevention of delinquencies.*

(a) To aid in the detection and prevention of insurer delinquencies, it is the Commissioner's duty to:

- (1) Notify insurance regulators when revoking or suspending the license of a member insurer, or making any formal order that the insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from this State, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors. That notice shall be sent electronically through the NAIC headquarters and mailed to all insurance regulators within 30 days following the action taken or the date on which the action occurs.
- (2) Report to the Board when the Commissioner has taken any of the actions in subdivision (1) of this subsection or has received a report from another insurance regulator indicating that any such action has been taken in another state. The report to the Board shall contain all significant details of the action taken or the report received from another insurance regulator.

(3) Report to the Board when the Commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that the insurer may be delinquent.

(4) Furnish the Board with the NAIC Insurance Regulatory Information System financial test ratios and a listing of companies that are not included in the ratios developed by the NAIC; and the Board may use that data in carrying out its duties and responsibilities under this section. The data shall be kept confidential by the Board until it is made public by the Commissioner or another lawful authority.

(b) The Commissioner may seek the advice and recommendations of the Board concerning any matter affecting the Commissioner's duties and responsibilities regarding the financial condition of member insurers and other entities seeking admission to transact insurance business in this State.

(c) The Board may, upon majority vote, make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this State. The reports and recommendations are not public records.

(d) The Board shall, upon majority vote, notify the Commissioner of any information indicating that any member insurer may be delinquent.

(e) The Board may, upon majority vote, request that the Commissioner order an examination of any member insurer that the Board in good faith believes may be delinquent. Within 30 days of the receipt of the request, the Commissioner shall begin the examination. The examination may be conducted as an NAIC examination or may be conducted by persons the Commissioner designates. The cost of the examination shall be paid by the Association; and the examination report shall be treated as are other examination reports. In no event shall the examination report be released to the Board before its release to the public; but this does not preclude the Commissioner from complying with subsection (a) of this section. The Commissioner shall notify the Board when the examination is completed. The request for an examination shall be kept on file by the Commissioner, but shall not be open to public inspection before the release of the examination report to the public.

(f) The Board may, upon majority vote, make recommendations to the Commissioner for the detection and prevention of insurer delinquencies.

(g) The Board shall, at the conclusion of any insurer insolvency in which the Association was obligated to pay covered claims, prepare a report to the Commissioner containing any information that it has in its possession bearing on the history and causes of the insolvency. The Board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and the Board may adopt by reference any report prepared by such other associations.

" § 58-62-61. Miscellaneous provisions.

(a) Nothing in this Article reduces the liability for unpaid assessments of the insureds of a delinquent insurer operating under an insurance plan with assessment liability.

(b) Records shall be kept of all negotiations and meetings in which the Association or its representatives are involved and in which the activities of the Association in carrying out its powers and duties under G.S. 58-62-36 are discussed. Records of those negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the delinquent insurer, upon the termination of the delinquency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection limits the duty of the Association to render a report of its activities under G.S. 58-62-66.

(c) For the purpose of carrying out its obligations under this Article, the Association is a creditor of the delinquent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the Association is entitled as subrogee under G.S. 58-62-36(r). Assets of the delinquent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the delinquent insurer as required by this Article. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets that the reserves that should have been established for the policies bear to the reserves that should have been established for all policies of insurance written by the delinquent insurer.

(d) Before the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the Association, the shareholders, and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In making such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(e) No distribution to stockholders, if any, of a delinquent insurer shall be made until and unless the Association has fully recovered the

total amount of its valid claims with interest thereon for funds expended in carrying out its powers and duties under G.S. 58-62-36 with respect to the insurer.

(f) If an order for liquidation or rehabilitation of an insurer domiciled in this State has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subsections (g) through (i) of this section.

(g) No such distribution is recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the insurer's ability to fulfill its contractual obligations.

(h) Any person who was an affiliate that controlled the insurer when the distributions were paid is liable up to the amount of distributions it received. Any person who was an affiliate that controlled the insurer when the distributions were declared is liable up to the amount of distributions it would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(i) The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the insolvent insurer to pay the insolvent insurer's contractual obligations.

(j) If any person liable under subsection (h) of this section is insolvent, all of its affiliates that controlled it when the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

" § 58-62-66. Examination of the Association; annual report.

The Association is subject to examination and regulation by the Commissioner. The Board shall submit to the Commissioner each year, not later than 120 days after the Association's fiscal year, a financial report in a form approved by the Commissioner and a report of its activities during the preceding fiscal year.

" § 58-62-76. Immunity.

There is no liability by, and no cause of action of any nature arises against, any member insurer or its agents or employees, the Association or its agents or employees, members of the Board, the Commissioner or the Commissioner's representatives, or insurance regulators or their representatives, for any act or omission by them in the performance of their powers and duties under this Article. This immunity extends to the participation in any organization of one or

more other state associations of similar purposes and to any such organization and its agents or employees.

" § 58-62-81. Stay of proceedings; reopening default judgments.

All proceedings in which the insolvent insurer is a party in any court in this State shall be stayed 60 days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the Association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict or finding based on default, the Association may apply to have the judgment set aside by the same court that made the judgment and may defend against such suit on the merits.

" § 58-62-86. Prohibited advertisement of Article in insurance sales; notice to policyholders.

(a) No person shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any oral or written advertisement, announcement, or statement that uses the existence of the Association or this Article for the purpose of sale or solicitation of or inducement to purchase any kind of insurance covered by this Article. However, this subsection does not apply to the Association or any other person who does not sell or solicit insurance.

(b) Within 180 days after the effective date of this Article, the Association shall prepare a summary document that describes the general purposes and current limitations of this Article and that complies with subsection (c) of this section. This document shall be submitted to the Commissioner for the Commissioner's approval. Sixty days after receiving approval, no insurer may deliver a policy described in G.S. 58-62-21(b) to any person unless the document is delivered to that person before or at the time of delivery of the policy, unless subsection (d) of this section applies. The document shall also be available upon request by a policyholder. The distribution, delivery, contents, or interpretation of this document does not mean that either the policy or the policyholder would be covered in the event of the delinquency of a member insurer. The document shall be revised by the Association as amendments to this Article require. Failure to receive this document does not give any person greater rights than those stated in this Article.

(c) The document prepared under subsection (b) of this section shall contain a clear and conspicuous disclaimer on its face. The Commissioner shall prescribe the form and content of the disclaimer. The disclaimer shall:

- (1) State the name and addresses of the Association and Department;
 - (2) Prominently warn the policyholder that the Association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in this State;
 - (3) State that the insurer and its agents are prohibited by law from using the existence of the Association for the purpose of sale or solicitation of or inducement to purchase any kind of insurance;
 - (4) Emphasize that the applicant or policyholder should not rely on coverage under the Association when selecting an insurer; and
 - (5) Provide other information as directed by the Commissioner.
- (d) No insurer or agent may deliver a policy described in G.S. 58-62-21(b) and excluded under G.S. 58-62-21(c) from coverage under this Article unless the insurer or agent, before or at the time of delivery, gives the policyholder a separate written notice that clearly and conspicuously discloses that the policy is not covered by the Association. The Commissioner shall prescribe the form and content of the notice."

Sec. 57. G.S. 58-62-1, 58-62-5, 58-62-10, 58-62-15, 58-62-20, 58-62-25, 58-62-30, 58-62-35, 58-62-40, 58-62-45, 58-62-50, 58-62-55, 58-62-60, 58-62-65, 58-62-70, 58-62-80, 58-62-85, and 58-62-90 are repealed.

Sec. 58. The Commissioner and the Commissioner's staff shall maintain close relations with the insurance regulators of other states and shall actively participate in the activities and affairs of the National Association of Insurance Commissioners, the National Conference of Insurance Legislators, and other organizations or successor organizations insofar as it will, in the Commissioner's judgment, enhance the purposes of the regulation of insurance. The actual and necessary travel and related expenses incurred by the Commissioner and members of the Commissioner's staff in attending meetings of such organizations, their committees, subcommittees, hearings, and other official activities, as well as the general expenses of participation in such organizations shall be a charge on available funds and the appropriation of the Department.

Sec. 59. Sections 56 and 57 of this act do not apply to any insurer that is in a delinquency proceeding, as defined in G.S. 58-30-10(5), in this State or any other state on the effective date of Sections 56 and 57 of this act.

Sec. 60. Sections 9 and 49 through 54 of this act become effective September 1, 1991. Sections 28 and 40 of this act become

effective October 1, 1991. Sections 29 and 30 of this act become effective January 1, 1992. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

S.B. 384

CHAPTER 682

AN ACT TO CHANGE THE PROCEDURE FOR ISSUING
NONRESIDENT NONCOMPLIANCE REPORTS AND TO
MAKE CHANGES REGARDING SUSPENSION AND
REVOCATION OF DRIVERS LICENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.19(c) reads as rewritten:

"(c) Upon the failure of the nonresident to comply with the citation, the ~~law-enforcement officer~~ clerk of court ~~shall obtain a warrant for his arrest and~~ shall report the noncompliance to the Division. The report of noncompliance shall clearly identify the nonresident; describe the violation, specifying the section of the statute, code, or ordinance violated; indicate the location and date of offense; and identify the vehicle ~~involved; involved, bear the signature of the law-enforcement officer; and contain a copy of the personal recognizance signed by the nonresident.~~"

Sec. 2. G.S. 20-14 reads as rewritten:

"§ 20-14. *Duplicate licenses.*

A licensee may obtain a duplicate license, upon payment of a fee of five dollars (\$5.00), if he furnishes to the Division satisfactory proof that:

- (1) He has lost or destroyed his license; or
- (2) It is necessary to change the name or address on the license; or
- (3) He has reached the age wherein he is entitled to a license with a different color photographic ~~background, background;~~ or
- (4) He has become eligible for reinstatement of his North Carolina driving privilege following a period of suspension or revocation and the last license issued has not yet expired."

Sec. 3. G.S. 20-16(d) reads as rewritten:

"(d) Upon suspending the license of any person as ~~hereinbefore authorized in this section~~ authorized, section, the Division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, unless a preliminary hearing

was held before his license was suspended, as early as practical within not to exceed 30 days after receipt of such request. The hearing shall be conducted in the district court district as defined in G.S. 7A-133 wherein the licensee resides. Hearings shall be rotated among all the counties within that district if the district contains more than one county unless the Division and the licensee agree that such hearing may be held in some other district, and such notice shall contain the provisions of this section printed thereon. Upon such hearing the duly authorized agents of the Division may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the Division shall either rescind its order of suspension, or good cause appearing therefor, may extend the suspension of such license. Provided further upon such hearing, preliminary or otherwise, involving subsections (a)(1) through (a)(10a) of this section, the Division may for good cause appearing in its discretion substitute a period of probation not to exceed one year for the suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Division and such period of probation shall not exceed one year, and any violation of the probation agreement during the probation period shall result in a suspension for the unexpired remainder of the suspension period. The authorized agents of the Division shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provided in connection with hearings held after suspension. These agents shall also have the authority to take possession of a surrendered license on behalf of the Division if the suspension is upheld and the licensee requests that the suspension begin immediately."

Sec. 4. G.S. 20-24.1(c) reads as rewritten:

"(c) If the person satisfies the conditions of subsection(b) that are applicable to his case before the effective date of the revocation order, the revocation order must be rescinded and any entries on his driving record relating to it shall be deleted and the person does not have to pay a restoration fee. For all other revocation orders issued pursuant to this section, the person must pay the restoration fee required by G.S. 20-7(i) and satisfy any other applicable requirements of this Article before he may be relicensed."

Sec. 5. G.S. 20-24.2(b) reads as rewritten:

"(b) The reporting requirement of this section and the revocation mandated by G.S. 20-24.1 do not apply to offenses in which an order of forfeiture of a cash bond is entered and reported to the Division pursuant to G.S. 20-24. If an order is sent to the Division by the

clerk through clerical mistake or other inadvertence, the clerk's office that sent the report of noncompliance must withdraw the report and send notice to the Division which shall correct its records accordingly."

Sec. 6. G.S. 20-28.1(a) reads as rewritten:

"§ 20-28.1. Conviction of moving offense committed while driving during period of suspension or revocation of license.

(a) Upon receipt of notice of conviction of any person of a motor vehicle moving offense, except a conviction punishable under G.S. 20-28(a1), such offense having been committed while such person's driving privilege was in a state of suspension or revocation, the Division shall revoke such person's driving privilege for an additional period of time as set forth in subsection (b) hereof."

Sec. 7. This act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

S.B. 426

CHAPTER 683

AN ACT TO REVISE AND RECODIFY AS CHAPTER 10A THE
STATUTES RELATING TO NOTARIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 10 of the General Statutes is repealed.

Sec. 2. The General Statutes are amended by adding a new Chapter to read:

"Chapter 10A.

"Notaries.

"§ 10A-1. Short title.

This act is the Notary Public Act and may be cited by that name.

"§ 10A-2. Purposes.

This Chapter shall be construed and applied to advance its underlying purposes, which are:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

"§ 10A-3. Definitions.

The following definitions apply in this Chapter:

(1) Acknowledgment. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily.

- (2) Commission. -- The written authority to perform a notarial act.
- (3) Notarial act, notary act, and notarization. -- Any act that a notary is empowered to perform under G.S. 10A-9.
- (4) Notary public and notary. -- A person commissioned to perform notarial acts under this Chapter.
- (5) Oath or affirmation. -- A notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary, with reference made to a Supreme Being for an oath and with no reference made to a Supreme Being for an affirmation.
- (6) Official misconduct. -- Either of the following:
 - a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.
 - b. A notary's performance of a notarial act in a manner found by the Secretary of State to be negligent or against the public interest.
- (7) Personal knowledge of identity. -- Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.
- (8) Satisfactory evidence of identity. -- Identification of an individual based on either of the following:
 - a. One current document issued by a federal or state government with the individual's photograph.
 - b. Identification by a credible person who is personally known to the notary and who has personal knowledge of the individual's identity.
- (9) Verification or proof. A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has, in the notary's presence, voluntarily signed a document and taken an oath or affirmation concerning the document.

" § 10A-4. Commissioning.

(a) Except as provided in subsection (c) of this section, the Secretary of State shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

- (1) Be at least 18 years of age.
- (2) Reside or work in this State.
- (3) Satisfactorily complete a course of study that is approved by the Secretary of State and consists of not less than three

hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

- (4) Purchase and keep as a reference a manual approved by the Secretary of State that describes the duties, authority, and ethical responsibilities of notaries public.
- (5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary of State and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

(c) The Secretary of State may deny an application if any of the following applies to the applicant:

- (1) The applicant has been convicted of a crime involving dishonesty or moral turpitude.
- (2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.
- (3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

" § 10A-5. Length of term and jurisdiction.

A person commissioned under this Chapter may perform notarial acts in any part of this State for a term of five years, unless the commission is revoked under G.S. 10A-13(d) or resigned under G.S. 10A-13(c).

" § 10A-6. Recommissioning.

An applicant for recommissioning as a notary shall submit a new application and comply anew with the provisions of G.S. 10A-4, except for subdivision (b)(3).

" § 10A-7. Fee with commission application.

Every applicant for a notarial commission shall pay to this State a nonrefundable fee of twenty-five dollars (\$25.00). Every applicant for recommissioning shall pay to this State a nonrefundable fee of twenty-five dollars (\$25.00).

" § 10A-8. Oath of office.

If granted, a commission shall be sent to the register of deeds of the county where the appointee lives or works and a copy of the letter of transmittal sent to the appointee. The appointee shall appear before the register of deeds to which the commission was delivered within 90

days of commissioning and shall be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7. The notary shall then place the appointee's signature in a book designated as 'The Record of Notaries Public.' This Record shall contain the name and signature of the notary, the effective date and expiration date of the commission, the date the oath was administered, and the date of any revocation or resignation. The Record shall constitute the official record of the qualification of notaries public. The register of deeds shall deliver the commission to the notary following completion of the requirements of this section and shall notify the Secretary of State of the delivery.

If the appointee does not appear before the register of deeds within 90 days, the appointee must reapply for commissioning and the register of deeds must return the commission to the Secretary of State. If the appointee reapplies within one year of the granting of the commission, the Secretary of State may waive the requirements of subdivisions G.S. 10A-4(b)(3) and (4).

"§ 10A-9. Powers and limitations.

(a) A notary may perform any of the following notarial acts:

- (1) Acknowledgments.
- (2) Oaths and affirmations.
- (3) Verifications or proofs.

(b) A notarial act shall be attested by all of the following:

- (1) The signature of the notary, exactly as shown on the notary's commission.
- (2) The readable appearance of the notary's name, either from the notary's signature or otherwise.
- (3) The clear and legible appearance of the notary's stamp or seal.
- (4) A statement of the date the notary's commission expires.

(c) A notary is disqualified from performing a notarial act if any of the following apply:

- (1) The notary is a signer of or is named, other than as a trustee in a deed of trust, in the document that is to be notarized.
- (2) The notary will receive directly from a transaction connected with the notarial act any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in G.S. 10A-10, other than fees or other consideration paid for services rendered by a licensed attorney, a licensed real estate broker or salesperson, a motor vehicle dealer, or a banker.

(d) A notarial act performed in another jurisdiction by a notary public of that jurisdiction is valid to the same extent as if it had been performed by a notary commissioned under this Chapter.

(e) Commissioned officers on active duty in the United States armed forces who are authorized under 10 U.S.C. § 936 to perform notarial acts may perform the acts for persons serving in or with the United States armed forces, their spouses, and their dependents.

(f) The Secretary of State and register of deeds in the county in which a notary qualified may certify to the commission of the notary.

" § 10A-10. Fees of notaries.

The maximum fees that may be charged by a notary for notarial acts are as follows:

- (1) For acknowledgments, two dollars (\$2.00) per signature.
- (2) For oaths or affirmations without a verification or proof, two dollars (\$2.00) per person.
- (3) For verifications or proofs, two dollars (\$2.00) per signature.

" § 10A-11. Notarial stamp or seal.

A notary public shall provide and keep an official stamp or seal. The stamp or seal shall clearly show and legibly reproduce under photographic methods, when embossed, stamped, impressed, or affixed to a document, the name of the notary exactly as it appears on the commission, the name of the county in which appointed and qualified, the words 'North Carolina' or an abbreviation thereof, and the words 'Notary Public'. A notary public shall replace a seal that has become so worn that it can no longer clearly show or legibly reproduce under photographic methods the information required by this section. The stamp or seal is the property and responsibility of the notary whose name appears on it. However, upon revocation, the notary shall immediately surrender the stamp or seal to the Secretary of State.

" § 10A-12. Penalties.

(a) Any person who holds himself or herself out to the public as a notary or who performs notarial acts and is not commissioned is guilty of a misdemeanor and is punishable by a fine, imprisonment, or both, in the discretion of the court.

(b) Any notary who takes an acknowledgment or performs a verification or proof without personal knowledge of the signer's identity or without satisfactory evidence of the signer's identity is guilty of a misdemeanor and is punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment not to exceed 60 days, or both.

(c) Any notary who takes an acknowledgment or performs a verification or proof knowing it is false or fraudulent is guilty of a Class J felony.

(d) Any person who knowingly solicits or coerces a notary to commit official misconduct is guilty of a misdemeanor and is punishable by a fine, imprisonment, or both, in the discretion of the court.

" § 10A-13. *Change of status.*

(a) Within 30 days after the change of a notary's residence address, the notary shall notify the Secretary of State, by certified or registered mail, and provide a signed notice of the change, giving both the old and new addresses.

(b) Within 30 days after changing names, a notary shall notify the Secretary of State of the change by submitting a new application. The Secretary of State shall cancel the notary's commission under the old name, issue a commission under the new name, direct the notary to reappear before the register of deeds to take the oath of office, and direct the register of deeds to correct The Record of Notaries Public.

(c) A notary who resigns a commission shall deliver to the Secretary of State, by certified or registered mail, a notice indicating the effective date of resignation. Notaries who neither reside nor work in the State shall resign their commission.

(d) The Secretary of State may revoke a notarial commission on any ground for which an application for a commission may be denied under G.S. 10A-4(c).

" § 10A-14. *Clerks are notaries ex officio and may certify own seals.*

The clerks of the superior court and their assistants and deputies may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts under the seals of their respective courts.

" § 10A-15. *Registers of deeds are notaries ex officio and may certify own seals.*

Registers of deeds and their assistants and deputies may act as notaries public in their several counties by virtue of their offices as register of deeds and may certify their notarial acts under the seals of their respective offices.

" § 10A-16. *Acts of notaries public in certain instances validated.*

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is erroneously stated, or having a notarial seal that does not contain a readable impression of the notary's name, fails to contain the words 'North Carolina' or the abbreviation 'N. C.', or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for Georgia, are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before October 1, 1991."

Sec. 3. G.S. 161-10(a)(12) reads as rewritten:

"(12) ~~Acknowledgment.~~ Notarial acts. -- For taking an acknowledgment, oath, or affirmation or ~~for the performance of any performing any other notarial act -- one dollar (\$1.00).~~ the maximum fee set in G.S. 10A-10. This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection: except that this fee shall be charged in addition to the fees for registering, filing ~~filing~~, or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection."

Sec. 4. This act becomes effective October 1, 1991, and applies to all original applications and recommission applications made on or after that date. Except as provided in G.S. 10A-16, as enacted by this act, this act does not affect the validity of notarial acts performed prior to the effective date.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

S.B. 505

CHAPTER 684**AN ACT TO INCORPORATE THE TOWN OF WHITSETT IN GUILFORD COUNTY.**

The General Assembly of North Carolina enacts:

Section 1. A charter for the Town of Whitsett is enacted to read:

"CHARTER OF THE TOWN OF WHITSETT.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1-1. *Incorporation and Corporate Powers.* The inhabitants of the Town of Whitsett are a body corporate and politic under the

name 'Town of Whitsett.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"Sec. 1-2. *Corporate Limits.* The corporate limits are those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current boundaries, is maintained permanently in the office of the Town Clerk and is available for public inspection. Immediately upon alteration of the corporate limits made pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the Secretary of State, the Guilford County Register of Deeds, and the appropriate board of elections.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2-1. *Town Boundaries.* Until modified in accordance with the law the boundaries of the Town of Whitsett are as follows:

BEGINNING at a point in the center of the intersection of S.R. 3064 (Whitsett Park Road) and S.R. 3066, said point being identified as Point '1' on a map showing the boundary of the Town of Whitsett; thence South 05 deg. 00 min. West 1613 feet to a point (Point '2'); thence North 83 deg. 31 West 881 feet to a point (Point '3'); thence North 07 deg. 35 min. East 221 feet to a point (Point '4') on the Southern margin of S.R. 3065 (Greeson Road); thence along the Southern margin of Greeson Road North 79 deg. 01 min. West 1130 feet to a point (Point '5'); thence along the Southern margin of Greeson Road North 83 deg. 13 min. West 1578 feet to a point (Point '6') at the intersection of Greeson Road and N. C. Highway 61; thence along N. C. Highway 61 South 19 deg. 19 min. West 457 feet to a point (Point '7'); thence along N.C. Highway 61 South 41 deg. 26 min. West 330 feet to a point (Point '8'); thence North 82 deg. 59 min. West 1250 feet to a point (Point '9'); thence North 80 deg. 57 min. West 543 feet to a point (Point '10'); thence North 80 deg. 00 min. West 504 feet to a point (Point '11'); thence South 21 deg. 57 min. West 101 feet to a point (Point '12'); thence North 83 deg. 11 min. West 239 feet to a point (Point '13'); thence North 07 deg. 28 min. East 373 feet to a point (Point '14'); thence North 05 deg. 09 min. East 513 feet to a point (Point '15'); thence North 87 deg. 38 min. West 1808 feet to a point (Point '16') on the East Right-of-Way of S.R. 3060 (Penn-Lo Drive); thence North 87 deg. 38 min. West 61 feet to a point (Point '17') on the West Right-of-Way of Penn-Lo Drive; thence North 87 deg. 38 min. West 300 feet to a point (Point '18'); thence North 87 deg. 38 min. West 1117 feet to a point (Point '19'); thence North 06 deg. 32 min. East 216 feet to a

point (Point '20'); thence North 02 deg. 54 min. East 134 feet to a point (Point '21'); thence North 02 deg. 54 min. East 241 feet to a point (Point '22'); thence North 00 deg. 59 min. East 1009 feet to a point (Point '23'); in the centerline of U.S. Highway 70-A (Burlington Road); thence along the centerline of Burlington Road North 68 deg. 19 min. East 3610 feet to a point (Point '24'); thence along the centerline of Burlington Road North 57 deg. 28 min. East 1466 feet to a point (Point '25'); thence along the centerline of Burlington Road North 81 deg. 11 min. East 2050 feet to a point (Point '26'); thence South 16 deg. 18 min. East 30 feet to a point (Point '27'); in the southern margin of Burlington Road; thence along the southern margin of Burlington Road North 73 deg. 42 min. East 1212 feet to a point (Point '28'); thence South 01 deg. 19 min. West 2045 feet to a point (Point '29'); thence North 85 deg. 30 min. West 401 feet to a point (Point '30'); thence South 05 deg. 34 min. West 471 feet to a point (Point '31'); thence North 83 deg. 55 min. West 190 feet to a point (Point '32'); thence South 06 deg. 08 min. West 490 feet to a point (Point '33'); thence South 04 deg. 30 min. West 843 feet to a point (Point '34'); thence South 84 deg. 50 min. East 418 feet to a point (Point '35'); thence North 04 deg. 30 min. East 829 feet to a point (Point '36'); thence South 80 deg. 23 min. East 803 feet to a point (Point '37'); thence South 79 deg. 51 min. East 1526 feet to a point (Point '38'); thence South 04 deg. 09 min. West 653 feet to a point (Point '1'); said point being the POINT AND PLACE OF BEGINNING and containing 740 Acres, more or less.

"Sec. 2-2. *Limitation on Boundary Extension.* The Town of Whitsett shall not extend its boundaries by annexation pursuant to Article 4A of Chapter 160A of the General Statutes to the east of its eastern boundary, to the south of its southern boundary as described in Section 2-1 of the Charter, or to the north of U.S. Highway 70 between N.C. 61 and the Town of Gibsonville unless such extension is affirmatively permitted by an annexation agreement entered into by the Town of Whitsett and the Town of Gibsonville in accordance with Article 4, Part 6 of Chapter 160A of the General Statutes.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3-1. *Structure of Governing Body; Number of Members.* The governing body of the Town of Whitsett is the Town Council, which has five members.

"Sec. 3-2. *Manner of Electing Council.* The qualified voters of the entire Town elect the members of the Council.

"Sec. 3-3. *Term of Office of Council Members.* Members of the Council are elected to four-year terms except that of those elected at the initial election in 1991, the three highest vote getters who are

elected shall serve for four-year terms and the next two highest vote getters shall serve for two-year terms. In 1993 and quadrennially thereafter, two members of the Council shall be elected for four-year terms. In 1995 and quadrennially thereafter, three members of the Council shall be elected for four-year terms.

"Sec. 3-4. *Election of Mayor; Term of Office.* At the organizational meeting of the Council following each election, the Council shall elect one of its members to serve as Mayor. The Mayor serves as such at the pleasure of the Council.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4-1. *Conduct of Town Elections.* Town officers shall be elected on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5-1. *Town to Operate Under Mayor-Council Plan.* The Town of Whitsett operates under the Mayor-Council plan as provided in Chapter 160A, Article 7, Part 3 of the General Statutes."

Sec. 2. Until the organizational meeting of the Town Council of Whitsett following the 1991 municipal election, Walter Blythe, Andy Brown, Judy Flora, Tanya Gold, and Oscar Smith shall serve as members of the Town Council. The initial meeting of the Town Council shall be called by the clerk to the Guilford County Board of Commissioners. The interim governing body shall, at its first meeting, elect from among its members a chairman who shall have the powers of a mayor provided by general law.

Sec. 3. From and after the effective date of this act, the citizens and property in the Town of Whitsett shall be subject to municipal taxes levied for the year beginning July 1, 1991, and for that purpose the Village shall obtain from Guilford County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1991; and the businesses in the town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1991-92 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1991-92, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1991. The Town of Whitsett is eligible to receive distributions of State funds during fiscal year 1991-92.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

S.B. 565

CHAPTER 685

AN ACT TO ESTABLISH THE POPLAR TENT BEAUTIFICATION DISTRICT IN CABARRUS COUNTY, TO PROVIDE FOR LAND USE PLANNING IN THE DISTRICT, AND TO MAKE SEVERAL LOCAL MODIFICATIONS APPLICABLE WITHIN CABARRUS COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Election Authorized. The Cabarrus County Board of Commissioners may call an election in the Poplar Tent Beautification District, described in Section 2 of this act, to submit to the voters in the district the single issue of establishing the Poplar Tent Beautification District and authorizing the annual levy and collection of a special ad valorem tax on all taxable property in the district to beautify the district and protect the citizens of the district by developing and implementing a beautification plan providing for the installation of underground utility lines and facilities, development of buffering, landscaping, design and other appearance requirements, and other beautification or infrastructure improvement projects, including sidewalks, bike paths, and greenways, all implementation of the plan to be funded with tax revenue collected by the District. The Cabarrus County Board of Elections shall conduct the election in accordance with Chapter 163 of the General Statutes, and shall certify the results of the election to the Cabarrus County Board of Commissioners.

Sec. 2. Description of District. The Poplar Tent Beautification District consists of the following described property:

Lying and being in Townships 2 and 3, Cabarrus County, North Carolina, including, the subdivisions known as Beech Bluff, Cox's Mill, Freedom Acres, Poplar Trails, Quail Hollow Park, Tay-Mor, Twin Creeks, and others, and more particularly described as follows:

BEGINNING at the intersection of Harris Road and Odell School Road; thence in a southerly direction with Odell School Road to Untz Road; thence in an easterly direction with Untz Road continuing in an easterly direction to Coddle Creek; thence in a southerly direction with the center of Coddle Creek to the southeastern corner of Tax Parcel Number 5509-19-8530; thence in a generally westerly direction with the eastern boundary of Tax Parcel Number 5509-18-1553 and the southern boundary of Tax Parcel Number 5509-18-1553 to the

intersection of Plantation Road; thence in a southerly direction with the centerline of Plantation Road to its intersection with Pitts School Road; thence in a northerly direction with the centerline of Pitts School Road approximately 3290 feet to the northeast corner of Tax Parcel Number 4599-67-1383; thence with the southern, western and northern boundary of Tax Parcel Number 4599-67-1383 (including the parcel) to the center of Pitts School Road and its intersection with Weddington road; thence in an easterly direction with the centerline of Weddington Road to the northeastern corner of Tax Parcel Number 4599-69-5609; thence with the northern and western boundary of Tax Parcel Number 4599-69-5609 (excluding the parcel), back to and crossing Pitts School Road to a point 500 feet southwest of the centerline of Pitts School Road; thence in a northerly direction along a line 500 feet west of and parallel to Pitts School Road to the intersection of Pitts School Road with Poplar Tent Road; thence in a northwesterly direction with the centerline of Poplar Tent Road to the intersection of Poplar Tent Road and Derita Road; thence in a westerly direction with the centerline of Derita Road to the northern boundary of Tax Parcel Number 4680-95-1610; thence in a westerly direction with the northern and eastern boundary of Tax Parcel Number 4680-95-1610 (including the parcel) to the boundary of Tax Parcel Number 4680-95-5394; thence with the northern boundary of Tax Parcel Number 4680-95-5394 (excluding the parcel) and the eastern boundary and southern boundaries of the Twin Creeks Subdivision (including the subdivision) to the centerline of Derita Road; thence in a northerly and westerly direction with the southern boundary of Tax Parcel Number 4680-73-1581 (including the parcel) to the center of Rocky River; thence continuing in a northerly direction with the center of Rocky River to its intersection with Harris Road; thence in an easterly direction with the centerline of Harris Road to its intersection with Odell School Road, the point of BEGINNING.

Sec. 3. Ballot. The Cabarrus County Board of Elections shall prepare ballots in the following form for an election called under Section 1 of this act:

"[] FOR creation of the Poplar Tent Beautification District and the levy of an ad valorem tax, not to exceed five cents (5¢) for each one hundred dollars (\$100.00) taxable valuation, to beautify the district and protect the citizens of the district by developing and implementing a beautification plan providing for the installation of underground utility lines and facilities, development of buffering, landscaping, design and other appearance requirements, and other beautification or infrastructure improvement projects, including sidewalks.

bike paths, and greenways, all implementation of the plan to be funded with tax revenue collected by the District.

- [] AGAINST creation of the Poplar Tent Beautification District and the levy of an ad valorem tax, not to exceed five cents (5¢) for each one hundred dollars (\$100.00) taxable valuation, to beautify the district and protect the citizens of the district by developing and implementing a beautification plan providing for the installation of underground utility lines and facilities, development of buffering, landscaping, design and other appearance requirements, and other beautification or infrastructure improvement projects, including sidewalks, bike paths, and greenways, all implementation of the plan to be funded with tax revenue collected by the District."

Sec. 4. District Established; Tax Levy. If a majority of the qualified voters voting in an election called under Section 1 of this act vote in favor of creating the Poplar Tent Beautification District and authorizing the levy and collection of an ad valorem tax in the district, the Cabarrus County Board of Commissioners shall, upon receipt of a certified copy of the election results, adopt a resolution creating the Poplar Tent Beautification District and shall file a copy of the resolution with the clerk of the superior court of Cabarrus County. Upon establishing the Poplar Tent Beautification District, the Cabarrus County Board of Commissioners may annually levy an ad valorem tax on all taxable property in the district in an amount the board considers necessary to develop and implement the beautification plan and projects described in Section 1 of this act, that amount not to exceed five cents (5¢) for each one hundred dollars (\$100.00) taxable valuation of property. The proceeds of this tax shall be used only to develop and implement the beautification plan and projects described in Section 1 of this act.

Sec. 5. Nature of District; Governing Body. If created, the Poplar Tent Beautification District shall be a body politic and corporate and may provide for the beautification of the district and protection of the citizens of the district by developing and implementing the beautification plan and projects described in Section 1 of this act, and may do all acts reasonably necessary to fulfill this purpose. The governing body of the district may develop the beautification plan jointly with the City of Concord or Cabarrus County planning and zoning departments, or may consult with staff and use available resources within those departments. The Cabarrus County Board of Commissioners shall serve, ex officio, as the governing body of the district, and the officers of the board of county commissioners shall likewise serve as the officers of the governing

body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

Sec. 6. Comprehensive Land Use Plan: Advisory Commission.

(a) If the Poplar Tent Beautification District is created as provided in Sections 1 through 5 of this act, the governing body of the district, at its first meeting, shall appoint an advisory commission as provided in this section, for the purpose of developing a comprehensive land use plan to be applied within the district boundaries described in Section 2 of this act. The purpose of the comprehensive land use plan is to identify appropriate land uses and to provide stability within the district with respect to future changes in land use. The advisory commission shall consist of seven members: three members selected by the City of Concord Board of Aldermen, three members selected by the Cabarrus County Board of Commissioners, and one member selected by the other six members of the advisory commission. Of the three members selected respectively by the city and the county, one shall be an elected official and may be a member of the respective governing board, and the other two shall not be elected officials but shall either reside or own property in the Poplar Tent Beautification District. The advisory commission shall appoint a chairman from among its members, and the chairman shall vote only in case of a tie.

(b) The advisory commission shall hold public hearings, solicit comments and recommendations for appropriate present and future land use within the Poplar Tent Beautification District, and shall develop a comprehensive land use plan designating appropriate land uses for the District. After adoption of a plan by a majority of the members of the advisory commission, the plan shall be submitted to the Cabarrus County Board of Commissioners, and to the governing board of any municipality that is located entirely or partially within the District, or that exercises zoning jurisdiction within the District. Upon submission of the plan to the governing bodies as set forth in this subsection, those bodies may (i) adopt the plan, (ii) refer the plan back to the advisory commission with requested revisions, or (iii) take no action on the plan; provided that in order for the plan to become effective within the entire District, an identical plan must be adopted by each of the local governments exercising zoning jurisdiction within the District. If an identical plan is adopted by each of those jurisdictions, the plan shall have the effect of a comprehensive plan in the District and all land use within each jurisdiction within the District shall be consistent with the comprehensive plan. After adoption under this section, the comprehensive land use plan developed under this section shall not be changed or repealed except upon a vote in favor of

the specific change or repeal by a majority of each of the governing bodies of the jurisdictions that adopted the plan.

Sec. 7. Section 3 of Chapter 233 of the 1987 Session Laws reads as rewritten:

"Sec. 3. This act shall apply only to Orange County and Cabarrus County and to municipalities located within that county, those counties."

Sec. 8. Section 1 of Chapter 269 of the 1985 Session Laws reads as rewritten:

"Section 1. G.S. 40A-10 is rewritten to read:

'§ 40A-10. Sale or other disposition of land condemned.--When any property condemned by a condemnor is no longer needed for the purpose for which it was condemned, it may be used for any other public purpose or it may be sold or disposed of in the following manner: The property shall be offered for a reasonable time, and may be sold by private sale as set forth in G.S. 160A-267, to the prior owner of the property, or his heirs, successors, or assigns, provided not more than ten (10) years have lapsed since the property was purchased, at the price paid for the property whether arrived at through negotiation or judgment including the reasonable value of any improvements made on the property, and if this party shall refuse to purchase the property, then it may be sold or disposed of in the manner prescribed by law for the sale and disposition of surplus property.'"

Sec. 9. G.S. 160A-360 (f) and (f1) read as rewritten:

"(f) When a city annexes, or a new city is incorporated in, or a city extends its jurisdiction to include, an area that is currently being regulated by the county, the county regulations and powers of enforcement shall remain in effect until (i) the city has adopted such regulations, or (ii) a period of 60 120 days has elapsed following the annexation, extension or incorporation, whichever is sooner. During this period the city may hold hearings and take any other measures that may be required in order to adopt its regulations for the area.

(f1) When a city relinquishes jurisdiction over an area that it is regulating under this Article to a county, the city regulations and powers of enforcement shall remain in effect until (i) the county has adopted this regulation or (ii) a period of 60 120 days has elapsed following the action by which the city relinquished jurisdiction, whichever is sooner. During this period the county may hold hearings and take other measures that may be required in order to adopt its regulations for the area."

Sec. 10. Sections 7, 8 and 9 of this act apply only to Cabarrus County and to any incorporated municipality partly or wholly located in Cabarrus County.

Sec. 11. The boundaries of the Odell Fire District in Cabarrus County, and of the P.S.R. (PSR) Fire District in Cabarrus County, as established in Sections 13 and 14 of Chapter 558 of the 1987 Session Laws, are revised by transferring to the Odell Fire District and by deleting from the PSR Fire District, all of the area within the PSR Fire District that is (i) located North of Interstate 85, and (ii) not within the corporate limits of the City of Concord.

Sec. 12. Section 11 of this act becomes effective October 1, 1991. The remainder of this act is effective upon ratification. Section 6 of this act expires on December 31, 1993, if no comprehensive plan has been adopted before that date by a majority of the advisory commission as provided in that section.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 716

CHAPTER 686

AN ACT TO MAKE VARIOUS CHANGES TO LAWS
PERMITTING GRAND JURIES TO INVESTIGATE DRUG-
TRAFFICKING CHARGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-622(h) reads as rewritten:

"(h) A written petition for convening of grand jury under this section may be filed by the district attorney, with the approval of a committee of at least three members of the North Carolina Conference of District Attorneys, and with the concurrence of the Attorney General, with the Clerk of the North Carolina Supreme Court. The Chief Justice shall appoint a panel of three judges to determine whether to order the grand jury convened. A grand jury under this section may be convened if the three-judge panel determines that:

- (1) The petition alleges the commission of or a conspiracy to commit a violation of G.S. 90-95(h) or G.S. 90-95.1, any part of which violation or conspiracy occurred in the county where the grand jury sits, and that persons named in the petition have knowledge related to the identity of the perpetrators of those crimes but will not divulge that knowledge voluntarily or that such persons request that they be allowed to testify before the grand jury; and
- (2) The affidavit sets forth facts that establish probable cause to believe that the crimes specified in the petition have been committed and reasonable grounds to suspect that the persons named in the petition have knowledge related to the identity of the perpetrators of those crimes.

The affidavit shall be based upon personal knowledge or, if the source of the information and basis for the belief are stated, upon information and belief. The panel's order convening the grand jury as an investigative grand jury shall direct the grand jury to investigate the crimes and persons named in the petition, and shall be filed with the Clerk of the North Carolina Supreme Court. A grand jury so convened retains all powers, duties, and responsibilities of a grand jury under this Article. The contents of the petition and the affidavit shall not be disclosed. Upon receiving a petition under this subsection, the Chief Justice shall appoint a panel to determine whether the grand jury should be convened as an investigative grand jury.

A grand jury authorized by this subsection may be convened from an existing grand jury or grand juries authorized by subsection (b) of this section or may be convened as an additional grand jury to an existing grand jury or grand juries. Notwithstanding subsection (b) of this section, grand jurors impaneled pursuant to this subsection shall serve for a period of 12 months, and, if an additional grand jury is convened, 18 persons shall be selected to constitute that grand jury. At any time for cause shown, the presiding superior court judge may excuse a juror temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused."

Sec. 2. G.S. 15A-623(h) reads as rewritten:

"(h) If a grand jury is convened pursuant to G.S. 15A-622(h), notwithstanding subsection (d) of this section, a prosecutor shall be present to examine witnesses, and a court reporter shall be present and record the examination of witnesses. The record shall be transcribed. If the prosecutor determines that it is necessary to compel testimony from the witness, he may grant use immunity to the witness. The grant of use immunity shall be given to the witness in writing by the prosecutor and shall be signed by the prosecutor. The written grant of use immunity shall also be read into the record by the prosecutor and shall include an explanation of use immunity as provided in G.S. 15A-1051. A witness shall have the right to leave the grand jury room to consult with his counsel at reasonable intervals and for a reasonable period of time upon the request of the witness. Notwithstanding subsection (e) of this section, the record of the examination of witnesses shall be made available to the examining prosecutor, and he may disclose contents of the record to other investigative or law-enforcement officers, the witness or his attorney to the extent that the disclosure is appropriate to the proper performance of his official duties. The record of the examination of a witness may be used in a trial ~~to corroborate or impeach that witness~~ to the extent that it is relevant and otherwise admissible. Further disclosure of grand jury proceedings convened pursuant to this act may be made

upon written order of a superior court judge if the judge determines disclosure is essential:

- (1) To prosecute a witness who appeared before the grand jury for contempt or perjury; or
- (2) To protect a defendant's constitutional rights or statutory rights to discovery pursuant to G.S. 15A-903.

Upon the convening of the investigative grand jury pursuant to approval by the three-judge panel, the district attorney shall subpoena the witnesses. The subpoena shall be served by the investigative grand jury officer, who shall be appointed by the court. The name of the person subpoenaed and the issuance and service of the subpoena shall not be disclosed, except that a witness so subpoenaed may divulge that information. A The presiding superior court judge shall hear any matter concerning the investigative grand jury in camera to the extent necessary to prevent disclosure of its existence. The court reporter for the investigative grand jury shall be present and record and transcribe the in camera proceeding. The transcription of any in camera proceeding and a copy of all subpoenas and other process shall be returned to the Chief Justice or to such member of the three-judge panel as the Chief Justice may designate, to be filed with the Clerk of the North Carolina Supreme Court. The subpoena shall otherwise be subject to the provisions of G.S. 15A-801 and Article 43 of Chapter 15A. When an investigative grand jury has completed its investigation of the crimes alleged in the petition, the investigative functions of the grand jury shall be dissolved and such investigation shall cease. The District Attorney shall file a notice of dissolution of the investigative functions of the grand jury with the Clerk of the North Carolina Supreme Court."

Sec. 3. Section 6 of Chapter 843 of the Session Laws of 1985, as amended by Chapter 1040 of the Session Laws of 1987, reads as rewritten:

"Sec. 6. This act shall become effective October 1, 1986 and shall expire October 1, 1991, but the said expiration date shall not affect the term or authority of a grand jury constituted at that time, October 1, 1986."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

S.B. 723

CHAPTER 687

AN ACT TO ESTABLISH SAFEGUARDS FOR CONTROLLED SUBSTANCE EXAMINATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 95 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 20.

"Controlled Substance Examination Regulation.

" § 95-230. Purpose.

The General Assembly finds that individuals should be protected from unreliable and inadequate examinations and screening for controlled substances. The purpose of this Article is to establish procedural and other requirements for the administration of controlled substance examinations.

" § 95-231. Definitions.

As used in this Article, unless the context clearly requires otherwise:

- (1) 'Controlled substance' is as defined in G.S. 90-87(5) or a metabolite thereof.
- (2) 'Examiner' means a person, firm, or corporation, doing business in the State, including State, county, and municipal employers, and who performs or has performed by another person a controlled substance examination.
- (3) 'Examinee' means an individual who is an employee of the examiner or an applicant for employment with the examiner and who is requested or required by an examiner to submit to a controlled substance examination.

" § 95-232. Procedural requirements for the administration of controlled substance examinations.

(a) An examiner who requests or requires an examinee to submit to a controlled substance examination shall comply with the procedural requirements set forth in this section.

(b) Collection of samples: the collection of samples for examination or screening shall be performed under reasonable and sanitary conditions. Individual dignity shall be preserved to the extent practicable. Samples shall be collected in a manner reasonably calculated to prevent substitution of samples and interference with the collection, examination, or screening of samples.

(c) Approved labs: the examiner shall use only laboratories that have demonstrated satisfactory performance in the proficiency testing programs of the National Institute on Drug Abuse, or the College of American Pathology. An approved lab shall confirm any sample that produces a positive result by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method.

(d) Retention of samples: a portion of every sample that produces a confirmed positive examination result shall be preserved by the

laboratory that conducts the confirmatory examination for a period of at least 90 days from the time the results of the confirmed positive examination are mailed or otherwise delivered to the examinee's employer.

(e) Chain of custody: the examiner or his agent shall establish procedures regarding chain of custody for sample collection and examination to ensure proper record keeping, handling, labeling, and identification of examination samples.

" § 95-233. No duty to examine.

Nothing in this Article shall be construed to place a duty on examiners to conduct controlled substance examinations.

" § 95-234. Violation of controlled substance examination regulations; civil penalty.

(a) Any examiner who violates the provisions of this Article shall be subject to a civil penalty of up to two hundred fifty dollars (\$250.00) per examinee with the maximum not to exceed one thousand dollars (\$1,000) per investigation by the Commissioner of Labor or his authorized representative. In determining whether or not a violation of this Article has occurred, the Commissioner shall determine whether the examiner responsible for the violation was the one who performed the examination or the one for whom the examination was performed. In determining the amount of the penalty, the Commissioner shall consider:

- (1) The appropriateness of the penalty for the size of the business of the employer charged; and
- (2) The gravity of the violation.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B.

(b) The amount of the penalty when finally determined may be recovered in a civil action brought by the Commissioner in the General Court of Justice.

(c) Sums collected under this section by the Commissioner shall be paid into the General Fund.

(d) Assessment of penalties under this section shall be subject to a two-year statute of limitations commencing at the time of the occurrence of the violation."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

AN ACT TO REORGANIZE THE LANGUAGE OF A STATUTE IN ORDER TO MAKE THE STATUTE MORE READABLE AND TO PERMIT PUBLIC SCHOOL EMPLOYEES TO AUTHORIZE THE PERIODIC DEDUCTION FROM THEIR SALARIES OF PAYMENTS TO THE EMPLOYEES' ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-3.3 reads as rewritten:

" § 143-3.3. *Assignments of claims against State.*

(a) Definitions. The following definitions apply in this section:

- (1) Assignment. An assignment or transfer of a claim, or a power of attorney, an order, or another authority for receiving payment of a claim.
- (2) Claim. A claim, a part or a share of a claim, or an interest in a claim, whether absolute or conditional.
- (3) Qualified charitable organization. A charitable organization that is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code.
- (4) State employee credit union. A credit union organized under Chapter 54 of the General Statutes whose membership is at least one-half employees of the State.
- (5) The State. The State of North Carolina and any department, bureau, or institution of the State of North Carolina.

(b) Assignments Prohibited. Except as otherwise provided in this section, any assignment of a claim against the State is void, regardless of the consideration given for the assignment, unless the claim has been duly audited and allowed by the State and the State has issued a warrant for payment of the claim. Except as otherwise provided in this section, the State shall not issue a warrant to an assignee of a claim against the State.

(c) Assignments in Favor of Certain Entities Allowed. This section does not apply to an assignment in favor of:

- (1) A hospital.
- (2) A building and loan association.
- (3) A uniform rental firm in order to allow an employee of the Department of Transportation to rent uniforms that include day-glo orange shirts or vests as required by federal and State law.
- (4) An insurance company for medical, hospital, disability, or life insurance.

(d) Assignments to Meet Child Support Obligations Allowed. This section does not apply to assignments made to meet child support obligations pursuant to G.S. 110-136.1.

(e) Assignments for Prepaid Legal Services Allowed. This section does not apply to an assignment for payment for prepaid legal services.

(f) Payroll Deduction for State Employee Credit Union Accounts Allowed. An employee of the State who is a member of a State employee credit union may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum for deposit to any credit union accounts, purchase of any credit union shares, or payment of any credit union obligations agreed to by the employee and the State employee credit union.

(g) Payroll Deduction for Payments to Certain Employees' Associations Allowed. An employee of the State or any of its institutions, departments, bureaus, agencies or commissions, or any of its local boards of education or community colleges, who is a member of a domiciled employees' association that has at least 2,000 members, the majority of whom are employees of the State or public school employees, may authorize, in writing, the periodic deduction from the employee's salary or wages a designated lump sum to be paid to the employees' association. A plan of payroll deductions pursuant to this subsection for employees of the State and other association members shall become void if the employees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. This subsection does not apply to county or municipal governments or any local governmental unit, except for local boards of education.

(h) Payroll Deduction for State Employees Combined Campaign Allowed. Subject to rules adopted by the State Controller, an employee of the State may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum to be paid to satisfy the employee's pledge to the State Employees Combined Campaign.

(i) Payroll Deduction for Public School and Community College Employees' Contributions to Charitable Organizations Allowed. Subject to rules adopted by the State Controller, an employee of a local board of education or community college may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the board of education or community college of a designated lump sum to be contributed to a qualified charitable organization that has first been approved by the employee's board of education or community college board.

(j) Payroll Deduction for University of North Carolina System Employees' Contributions to Certain Charitable Organizations Allowed. Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution of a designated lump sum to be contributed to a qualified charitable organization that exists to support athletic or charitable programs of the constituent institution and that has first been approved by the President of The University of North Carolina as existing to support athletic or charitable programs. If a payroll deduction plan under this subsection results in additional costs to a constituent institution, these costs shall be paid by the qualified charitable organizations receiving contributions under the plan.

~~All transfers and assignments made of any claim upon the State of North Carolina or any of its departments, bureaus or commissions or upon any State institution or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor and all powers of attorney, orders or other authorities for receiving payment of any such claim or any part or share thereof shall be absolutely null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest therein: Provided that this section shall not apply to assignments made in favor of hospitals, building and loan associations, prepaid legal services, uniform rental firms to allow employees of the Department of Transportation to rent uniforms that include day-glo orange shirts or vests as required by federal and State law, and medical, hospital, disability and life insurance companies: Provided further, that any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions, who is a member of any credit union organized pursuant to Chapter 54 of the North Carolina General Statutes having a membership at least one half of whom are employed by the State or its institutions, departments, bureaus, agencies or commissions, may authorize, in writing, the periodic deduction from his salary or wages as such employee of a designated lump sum, which shall be paid to such credit unions when said salaries or wages are payable, for deposit to such accounts, purchase of such shares or payment of such obligations as the employee and the credit union may agree: Provided further, that any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions, or any of its community colleges,~~

~~who is a member of a domiciled State employees' association with a membership of not less than 5,000 members, the majority of whom are State employees, may authorize in writing the periodic deduction from his salary or wages a designated sum to be paid to the employees' association. This plan of payroll deductions for State employees and other association members shall become null and void at such time as the employee association engages in collective bargaining. Except as otherwise provided, nothing in this last proviso shall apply to local boards of education, county or municipal governments or any local governmental units. Provided further, that subject to the rules and regulations adopted by the State Controller, any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions may authorize in writing the withholding from his salary or wages an amount to satisfy his pledge to the State Employees Combined Campaign. Provided further, that subject to any rules and regulations adopted by the State Controller, any employee of a local board of education or community college may authorize in writing the withholding from his salary or wages a periodic deduction of a designated sum to be paid to any organization which qualifies for recognition of exemption by the Internal Revenue Service as a charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code which has first been approved by his local board of education or community college board. Provided further, that subject to any rules and regulations adopted by the State Controller, any employee of a constituent institution of The University of North Carolina that processes its own payroll may authorize in writing the withholding from his salary or wages a periodic deduction of a designated sum to be paid to any organization that qualifies for recognition of exemption by the Internal Revenue Service as a charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code and that exists to support athletic or charitable programs at the constituent institution where the employee is employed; Provided further that such organization must be approved by the President of The University of North Carolina as existing to support such athletic or charitable programs; Provided, further that such withholding is allowed only at those eligible constituent institutions that have authorized withholding plans under this proviso. If a withholding plan results in additional costs to a campus, these costs shall be paid by those charitable organizations receiving contributions under the withholding plan.~~

~~(b) Subsection (a) of this section shall not apply to assignments made to meet child support obligations pursuant to G.S. 110-136.1."~~

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

H.B. 83

CHAPTER 689

AN ACT TO MAKE BASE BUDGET AND EXPANSION BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES; TO MAKE APPROPRIATIONS FOR CAPITAL IMPROVEMENTS FOR STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES; TO MAKE APPROPRIATIONS FOR OTHER PURPOSES; TO PROVIDE FOR BUDGET REFORM; AND TO PROVIDE FOR REVENUE RECONCILIATION.

The General Assembly of North Carolina enacts:

-----INTRODUCTION

Section 1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----TITLE OF ACT

Sec. 2. This act shall be known as "The Appropriations and Budget Revenue Act of 1991." This act contains the Current Operations Appropriations Bill, the Expansion Budget Appropriations Bill, the Capital Improvements Appropriations Bill, the Budget Reform Bill, and the Budget Revenue Bill.

TITLE I. - CURRENT OPERATIONS

PART 1.-----GENERAL FUND APPROPRIATIONS

-----CURRENT OPERATIONS/GENERAL FUND

Sec. 3. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated are made for the biennium ending June 30, 1993, according to the following schedule:

<u>Current Operations-General Fund</u>	<u>1991-92</u>	<u>1992-93</u>
General Assembly	\$ 17,938,648	\$ 21,046,954
Judicial Department	206,206,015	211,237,680
Department of the Governor		
01. Office of the Governor	5,469,301	5,518,312
02. Office of State Budget and Management	3,792,373	3,949,479
Lieutenant Governor's Office	540,195	546,884
Department of Secretary of State	4,326,650	4,051,626
Department of State Auditor	12,842,567	12,932,026
Department of State Treasurer	4,900,761	4,942,109
Department of Public Education	3,222,375,181	3,255,378,574
Department of Justice	49,523,536	49,256,518
Department of Administration		
01. Administration	47,434,529	50,504,200
02. State Controller	4,953,289	5,003,852
Department of Agriculture	38,807,702	39,005,796
Department of Labor	7,912,145	8,024,539
Department of Insurance	11,922,592	11,999,219
Department of Transportation		
01. Aeronautics	8,316,571	8,116,571
02. Aid to Railroads	128,406	100,000
Total Department of Transportation	8,444,977	8,216,571
Department of Environment, Health, and Natural Resources	170,211,080	171,781,349
Office of Administrative Hearings	1,271,644	

Administrative Rules Review Commission	249,502	251,675
Department of Human Resources		
01. Alcohol Drug Abuse Treatment Center - Black Mountain	3,817,687	3,863,726
02. Alcohol Drug Abuse Treatment Center - Butner	3,220,345	3,265,434
03. Alcohol Drug Abuse Treatment Center - Greenville	3,252,142	3,296,129
04. N.C. Special Care Center	565,852	677,743
05. Black Mountain Center	1,616,376	2,024,711
06. DHR - Secretary	7,620,495	7,682,412
07. Division of Aging	8,497,571	8,501,722
08. Schools for the Deaf and Hard of Hearing	19,020,001	19,314,192
09. Social Services	130,231,610	137,745,264
10. Medical Assistance	522,700,569	602,390,661
11. Social Services-State Aid to Non-State Agencies	5,440,669	5,440,669
12. Division of Services for the Blind	11,932,076	12,023,790
13. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	185,283,664	186,295,870
14. Dorothea Dix Hospital	34,977,059	37,689,383
15. Broughton Hospital	28,988,562	31,007,474
16. Cherry Hospital	30,316,203	31,973,149
17. John Umstead Hospital	30,349,582	34,128,381
18. Western Carolina Center	1,363,260	1,898,909
19. O'Berry Center	1,851,826	2,343,637
20. Murdoch Center	8,350,448	8,962,036
21. Caswell Center	5,317,947	7,746,005
22. Division of Facility Services	28,239,036	29,332,929
23. Division of Vocational Rehabilitation Services	21,670,313	21,764,916
24. Division of Youth Services	45,517,929	45,844,845
Total Department of Human Resources	1,140,141,222	1,245,213,987
Department of Correction	470,590,160	489,819,693

Department of Economic and Community
Development

01. Economic and Community Development	24,280,288	24,448,292
02. Biotechnology	7,157,547	7,157,547
03. MCNC	16,525,140	16,000,000
04. Rural Economic Development Center	1,500,000	1,500,000

Department of Revenue	52,328,385	52,739,894
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Department of Cultural Resources	38,719,635	39,621,588
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Department of Crime Control and Public Safety	25,484,486	25,821,731
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University of North Carolina - Board
of Governors

01. General Administration	13,923,182	17,152,569
02. University Institutional Program	6,188,426	6,488,426
03. Related Educational Programs	44,416,685	44,466,685
04. University of North Carolina at Chapel Hill		
a. Academic Affairs	129,483,376	140,160,037
b. Health Affairs	99,402,904	104,815,735
c. Area Health Education Centers	31,256,434	31,258,952
05. North Carolina State University at Raleigh		
a. Academic Affairs	169,101,616	174,401,151
b. Agricultural Research Service	35,427,423	35,530,678
c. Agricultural Extension Service	27,489,796	27,730,526
06. University of North Carolina at Greensboro	54,283,647	54,936,286
07. University of North Carolina at Charlotte	55,313,182	55,784,798
08. University of North Carolina at Asheville	16,562,863	16,774,319
09. University of North Carolina at Wilmington	32,300,883	32,697,186

10. East Carolina University		
a. Academic Affairs	71,884,297	72,760,031
b. Division of Health Affairs	50,741,525	52,969,402
11. North Carolina Agricultural and Technical State University	35,573,156	36,250,457
12. Western Carolina University	34,257,520	34,744,275
13. Appalachian State University	52,538,346	53,106,386
14. Pembroke State University	15,605,572	15,702,405
15. Winston-Salem State University	15,646,556	15,912,120
16. Elizabeth City State University	14,534,666	14,638,395
17. Fayetteville State University	16,685,006	16,823,862
18. North Carolina Central University	26,302,838	26,661,912
19. North Carolina School of the Arts	8,277,917	8,346,454
20. North Carolina School of Science and Mathematics	7,162,301	7,131,245
21. UNC Hospitals at Chapel Hill	37,755,275	47,092,624
Total University of North Carolina - Board of Governors	1,102,115,392	1,144,336,916
Department of Community Colleges	328,828,418	359,794,377
State Board of Elections	470,005	432,918
Contingency and Emergency	1,125,000	1,125,000
Reserve for Salary Adjustments	500,000	500,000
Reserve for Lowest Paid Employees	750,000	750,000
Reserve for Data Processing Equipment	2,500,000	2,500,000
Reserve for State Employees Health Benefit Plan	75,200,000	99,900,000
Reserve for Local Government Tax Sharing/Reimbursements	474,606,174	474,606,174
Debt Service	<u>76,028,270</u>	<u>73,049,578</u>

GRAND TOTAL CURRENT OPERATIONS --

GENERAL FUND	\$7,657,972.809	\$7,922,965.058
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PART 2.-----CURRENT OPERATIONS/HIGHWAY FUND

Sec. 4. Appropriations from the Highway Fund of the State for the maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the biennium ending June 30, 1993, according to the following schedule:

<u>Current Operations-Highway Fund</u>	<u>1991-92</u>	<u>1992-93</u>
Department of Transportation		
01. Administration	\$ 34,009,810	\$ 34,329,674
02. Division of Highways		
a. Administration and Operations	32,533,200	32,866,712
b. State Construction		
(01) Primary Construction	-	-
(02) Secondary Construction	66,121,926	66,717,023
(03) Urban Construction	10,805,664	10,028,266
(04) Access and Public Service Roads	2,000,000	2,000,000
(05) Special Appropriation for Highways	5,000	5,000
(06) Spot Safety Improvements	9,100,000	9,100,000
c. State Funds to Match Federal Highway Aid		
(01) Construction	65,992,066	65,992,066
(02) Planning Survey and Highway Planning Research	2,959,649	2,959,649
d. State Maintenance		
(01) Primary	85,882,433	85,882,433
(02) Secondary	151,355,630	151,355,630
(03) Urban	22,714,972	22,714,972
(04) Contract Resurfacing	100,000,000	102,500,000
e. Ferry Operations	16,547,896	16,547,896
03. Division of Motor Vehicles	74,154,792	74,649,678
04. Governor's Highway Safety Program	286,279	288,736
05. State Aid to Municipalities	66,121,926	66,717,023

06. State Aid for Public Transportation	5,038,766	5,046,001
07. Salary Adjustments for Highway Fund Employees	200,000	200,000
08. Reserve to Correct Occupational Safety and Health Conditions	425,000	425,000
09. Reserve to Continue DOT Merit Salary Increases	4,510,383	4,510,383
10. Debt Service	38,227,230	38,018,250
11. Reserve for State Employee Health Benefit Plan	6,200,000	8,200,000

Appropriations for Other State Agencies

01. Crime Control and Public Safety	83,263,687	86,276,285
02. Other Agencies		
a. Department of Agriculture	2,892,001	2,790,013
b. Department of Revenue	1,921,279	1,923,941
c. Department of Environment, Health, and Natural Resources:		
LUST Trust Fund	5,186,720	5,586,046
Chemical Test Program	376,176	378,286
d. Department of Correction	4,591,856	4,614,056
e. Department of Justice	240,250	240,250
f. Department of Public Education	22,930,662	22,868,826

GRAND TOTAL CURRENT OPERATIONS --

HIGHWAY FUND \$916,595,253 \$925,732,095

PART 3.-----HIGHWAY TRUST FUND

Sec. 4.1. Appropriations from the Highway Trust Fund are made for the fiscal biennium ending June 30, 1993, according to the following schedule:

	<u>1991-92</u>	<u>1992-93</u>
01. Intrastate System	\$ 201,279,015	\$ 203,941,317
02. Secondary Roads Construction	46,099,293	46,878,630
03. Urban Loops	81,313,427	82,389,951
04. State Aid - Municipalities	21,099,293	21,378,630
05. Program Administration	15,108,972	15,311,472
06. Transfer to General Fund	<u>170,000,000</u>	<u>170,000,000</u>

GRAND TOTAL/HIGHWAY TRUST FUND	\$534,900,000	\$539,900,000
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PART 4.-----BLOCK GRANT APPROPRIATIONS

Requested by: Representatives Nye, Easterling, Ethridge, H. Hunter, Senators Richardson, Martin of Pitt

-----BLOCK GRANT PROVISIONS

Sec. 5. (a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 1992, according to the following schedule:

TOTAL JOB TRAINING PARTNERSHIP ACT	\$ 35,316.871
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COMMUNITY SERVICES BLOCK GRANT

01. Community Action Agencies	\$ 8,906.905
02. Limited Purpose Agencies	494.305
03. Department of Human Resources to administer and monitor the activities of the Community Services Block Grant	484.890

TOTAL COMMUNITY SERVICES BLOCK GRANT	\$ 9,886.100
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COMMUNITY DEVELOPMENT BLOCK GRANT

01. State Administration	\$ 913.140
02. Urgent Needs/Contingency	1,987.193
03. Development Planning/Housing	1,987.193
04. Economic Development	7,948.772
05. Community Revitalization	27,820.702

TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT	\$ 40,657.000
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PREVENTIVE HEALTH BLOCK GRANT

01. Emergency Medical Services	\$ 451.915
02. Basic Public Health Services	928.395
03. Hypertension Programs	590.230
04. Health Education/Risk Reduction Programs and Health Promotion/Local Health Departments	1,013.371
05. Fluoridation of Water Supplies	158.134
06. Rape Prevention and Rape Crisis Programs	91.269
07. AIDS/HIV Education, Counseling, and Testing	290.577
08. TB Control Program	61.787

TOTAL PREVENTIVE HEALTH BLOCK GRANT	\$ 3,585.678
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MATERNAL AND CHILD HEALTH SERVICES

01. Healthy Mother/Healthy Children Block Grants to Local Health Departments	\$ 11,788,781
02. High Risk Maternity Clinic Services, Perinatal Education, and Consultation to Local Health Departments and Other Health Care Providers	1,554,303
03. Services to Disabled Children	5,367,054
04. Reimbursements for Local Health Departments for Contracted Nutritional Services	120,530
TOTAL MATERNAL AND CHILD HEALTH SERVICES	\$ 18,830,668

SOCIAL SERVICES BLOCK GRANT

01. County Departments of Social Services	\$ 42,846,858
02. Allocation for In-Home Services provided by County Departments of Social Services	1,184,524
03. Division of Mental Health, Developmental Disabilities, and Substance Abuse	5,514,782
04. Division of Services for the Blind	3,162,920
05. Division of Youth Services	1,037,868
06. Division of Facility Services	330,573
07. Division of Aging	333,656
08. Day Care Services	12,158,899
09. Volunteer Services	55,086
10. State Administration and State Level Contracts	3,392,468
11. Voluntary Sterilization Funds	98,710
12. Transfer to Maternal and Child Health Block Grant	1,670,089
13. Adult Day Care Services	652,889
14. County Departments of Social Services for Child Abuse/Prevention and Permanency Planning	394,841
15. Allocation to Division of Maternal and Child Health for Grants-in-Aid to Prevention Programs	439,261
16. Transfer to Preventive Health Block Grant for Emergency Medical Services and Basic Public Health Services	486,258

17. Allocation to Preventive Health Block Grant for AIDS Education	290,577
18. Allocation to Department of Administration for North Carolina Fund for Children	45,270
19. Allocation to the Division of Economic Opportunity for Head Start, Elderly and Handicapped Services	197,421
TOTAL SOCIAL SERVICES BLOCK GRANT	\$ 74,292,950

LOW INCOME ENERGY BLOCK GRANT

01. Energy Assistance Programs	\$ 18,407,453
02. Crisis Intervention	4,441,897
03. Administration	1,981,400
04. Weatherization Program	1,737,187
05. Indian Affairs	27,222
06. Transfer to Preventive Health Block Grant for Emergency Medical Services Program	209,116
07. Transfer to Social Services Block Grant for Adult Day Care Services	417,648
08. Transfer to Social Services Block Grant for State Administration & Contract Service	192,748
09. Transfer to Maternal and Child Health Block Grant in the Division of Maternal and Child Health for Healthy Mothers and Children	1,696,362
10. Transfer to SSBG for allocation to the Department of Administration for the North Carolina Fund for Children	45,270
TOTAL LOW INCOME ENERGY BLOCK GRANT	\$ 29,156,303

ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES BLOCK GRANT

01. Allocate funds to the four regional offices on a per capita basis for mental health services	\$ 1,866,556
02. Programs for the Chronically Mentally Ill	3,336,748
03. Continuation of child mental health nonresidential services in accordance with the Child Mental Health Plan	315,013

04. Continuation of child mental health residential services including group homes, specialized foster care, therapeutic homes, professional parenting programs, and respite care, with an emphasis on children under the age of 12	359,703
05. Continuation and expansion of community-based alcohol and drug services including prevention, early intervention, treatment, rehabilitation, nonhospital medical detoxification, and training	6,121,682
06. Continuation and expansion of services to female substance abusers, including specialized services at the ADATCS	2,652,698
07. Continuation and expansion of services to IV drug abusers, including increased capacity for drug screens and IV services at the ADATCS	3,518,950
08. Services to adolescents, including continuation and expansion of services in accordance with the Youth Substance Abuse Plan	3,140,864
09. Funding to support the provision of Treatment Alternatives to Street Crimes (TASC) programs for adults and four demonstration projects with local jails	462,104
10. Continuing of funding for detoxification services in the Eastern Region	1,048,110
11. Administration	1,085,098
TOTAL ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH SERVICES	
BLOCK GRANT	\$ 23,907,526

**MENTAL HEALTH SERVICES FOR THE HOMELESS
BLOCK GRANT**

01. Specialized Community Services for the Chronically Mentally Ill	\$ 420,000
02. Community-Based Services for Chronically Mentally Ill Youth	97,656
03. Administration	13,344

TOTAL MENTAL HEALTH SERVICES FOR THE HOMELESS BLOCK GRANT	\$ 531,000
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COMMUNITY YOUTH ACTIVITY PROGRAM BLOCK GRANT

01. Development of Community-Based Substance Abuse Prevention Programs for Youth	\$ 92,091
TOTAL COMMUNITY YOUTH ACTIVITY PROGRAM BLOCK GRANT	\$ 92,091

CHILD CARE AND DEVELOPMENT BLOCK GRANT

01. Child Day Care Services	14,752,146
02. Head Start Wrap-Around	3,337,000
03. Revolving Loans/Grants	500,000
04. County Day Care Coordinators	467,167
05. Staff/Child Ratio Reduction	208,300
06. Study of Day Care Salaries	100,000
07. Child Care Worker Credentials	100,000
08. Resource and Referral Programs	650,000
09. Facility Services Administration	202,054
TOTAL CHILD CARE AND DEVELOPMENT BLOCK GRANT	\$ 20,316,667

(b) Decreases in Federal Fund Availability

If federal funds are reduced below the amounts specified above after the effective date of this act, then every program, in each of the federal block grants listed above, shall be reduced by the same percentage as the reduction in federal funds.

(c) Increases in Federal Fund Availability

Any block grant funds appropriated by the United States Congress in addition to the funds specified in this act shall be expended as follows:

- (1) For the Community Development Block Grant or for the Preventive Health Block Grant -- each program category under the Community Development Block Grant or the Preventive Health Block Grant, as applicable, shall be increased by the same percentage as the increase in federal funds.
- (2) For the Maternal and Child Health Services Block Grant -- these additional funds shall be allocated to local health departments to assist in the reduction of infant mortality.
- (3) For other block grants -- these additional funds may be budgeted by the appropriate department, with the approval of the Office of State Budget and Management, provided the

resultant increases are in accordance with federal block grant requirements and are within the scope of the block grant plan approved by the General Assembly. All these budgeted increases shall be reported to the Joint Legislative Commission on Governmental Operations and to the Director of the Fiscal Research Division.

This subsection shall not apply to Job Training Partnership Act funds.

(d) Education Setaside of JTPA Funds

The Department of Economic and Community Development shall certify to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office when Job Training Partnership Act funds have been distributed to each agency, the total amount distributed to each agency, and the total amount of eight percent (8%) Education Setaside funds received.

PART 5.-----GENERAL PROVISIONS

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----SPECIAL FUNDS, FEDERAL FUNDS, AND
DEPARTMENTAL RECEIPTS/AUTHORIZATION FOR
EXPENDITURES

Sec. 6. There is appropriated out of the cash balances, federal receipts, and departmental receipts available to each department, sufficient amounts to carry on authorized activities included under each department's operations. All these cash balances, federal receipts, and departmental receipts shall be expended and reported in accordance with provisions of the Executive Budget Act, except as otherwise provided by statute. The Director of the Budget shall develop necessary budget controls, regulations, and systems to ensure that these funds and other State funds subject to the Executive Budget Act, may not be spent in a manner which would cause a deficit in expenditures.

Pursuant to G.S. 143-34.2, State departments, agencies, institutions, boards, or commissions may make application for, receive, or disburse any form of non-State aid. All non-State monies received shall be deposited with the State Treasurer unless otherwise provided by State law. These funds shall be expended in accordance with the terms and conditions of the fund award that are not contrary to the laws of North Carolina.

Requested by: Representatives Nesbitt, Diamont. Senators Basnight, Plyler

-----INSURANCE AND FIDELITY BONDS

Sec. 7. All insurance and all official fidelity and surety bonds authorized for the several departments, institutions, and agencies shall be effected and placed by the Insurance Department, and the cost of placement shall be paid by the affected department, institution, or agency with the approval of the Insurance Commissioner.

Requested by: Representatives Nesbitt, Diamont. Senators Basnight, Plyler

-----CONTINGENCY AND EMERGENCY FUND ALLOCATION

Sec. 8. Of the funds appropriated in this Title to the Contingency and Emergency Fund, \$900,000 for the 1991-92 fiscal year and \$900,000 for the 1992-93 fiscal year shall be designated for emergency allocations, which are for the purposes outlined in G.S. 143-23(a1). \$225,000 for the 1991-92 fiscal year and \$225,000 for the 1992-93 fiscal year shall be designated for other allocations from the Contingency and Emergency Fund.

Requested by: Representatives Nesbitt, Diamont. Senators Basnight, Plyler

-----PERMIT DEVIATION FROM EXPENDITURE OF FUNDS RESTRICTION

Sec. 8.1. For the 1991-92 fiscal year only, G.S. 143-16.3 does not apply to the extent that the Director of the Budget finds that compliance is impossible and that deviation is necessary because of complications in the budget process that were not contemplated when the budget for the 1991-93 fiscal biennium was enacted.

The Director of the Budget shall notify the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Fiscal Research Division of the Legislative Services Office that he intends to make such a finding at least 10 days before he makes the finding. The notification shall set out the reasons that compliance may be impossible and the complications in the budget process that were not contemplated when the budget for the 1991-93 fiscal biennium was enacted that may make compliance impossible.

The Director of the Budget shall report on a quarterly basis for the first six months of the 1991-92 fiscal year and monthly thereafter, to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on any deviations from G.S. 143-16.3, the reasons that compliance was impossible, and the complications in the budget process that were not

contemplated when the budget for the 1991-93 fiscal biennium was enacted that made compliance impossible.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----BUDGETING OF PILOT PROGRAMS

Sec. 9. (a) Any program designated by the General Assembly as experimental, model, or pilot shall be shown as a separate budget item and shall be considered as an expansion item until a succeeding General Assembly reapproves it.

Any new program funded in whole or in part through a special appropriations bill shall be designated as an experimental, model, or pilot program.

(b) The Governor shall submit to the General Assembly with his proposed budget a report of which items in the proposed budget are subject to the provisions of this section.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----AUTHORIZED TRANSFERS

Sec. 10. The Director of the Budget may transfer to General Fund budget codes from the General Fund salary adjustment appropriation, and may transfer to Highway Fund budget codes from the Highway Fund salary adjustment appropriation, amounts required to support approved salary adjustments made necessary by difficulties in recruiting and holding qualified employees in State government. The funds may be transferred only when the use of salary reserve funds in individual operating budgets is not feasible.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----EXPENDITURES OF FUNDS IN RESERVES LIMITED

Sec. 11. All funds appropriated by this act into reserves may be expended only for the purposes for which the reserves were established.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----NONPROFITS MAY RELINQUISH FUNDS

Sec. 12. G.S. 143-6.1 reads as rewritten:

"§ 143-6.1. *Information from private organizations receiving State funds.*

Every private person, corporation, organization, and institution which receives, uses or expends any State funds shall use or expend

such funds only for the purposes for which such State funds were appropriated by the General Assembly or collected by the State.

Each private person, corporation, organization, and institution which uses or expends State funds in the amount of twenty-five thousand dollars (\$25,000) or more annually, except when the funds are compensation for goods or services, shall file annually with the State Auditor and with the Joint Legislative Commission on Governmental Operations a financial statement in such form and on such schedule as shall be prescribed by the State Auditor, and shall furnish to the State Auditor for audit all books, records and other information as shall be necessary for the State Auditor to account fully for the use and expenditure of State funds. Each such private person, corporation, organization, and institution shall furnish such additional financial or budgetary information as shall be requested by the State Auditor or by the Joint ~~Committee~~ Legislative Commission on Governmental Operations. The State shall not disburse State funds appropriated by the General Assembly or collected by the State for use by any private person, corporation, organization, or institution unless that person, corporation, organization, or institution has provided all the reports and financial information required by this section. All financial statements furnished to the State Auditor or to the Joint Legislative Commission on Governmental Operations pursuant to this section, and any audits or other reports prepared by the State Auditor, shall be public records.

The receipt, use or expenditure of State funds by a private person, corporation, organization, and institution shall not, in and of itself, make or constitute such person, corporation, organization, or institution a State agency."

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----STATE MONEY RECIPIENTS/CONFLICT OF INTEREST POLICY

Sec. 13. Each private, nonprofit entity eligible to receive State funds, either by General Assembly appropriation, or by grant, loan, or other allocation from a State agency, before funds may be disbursed to the entity, shall file with the disbursing agency a notarized copy of that entity's policy addressing conflicts of interest that may arise involving the entity's management employees and the members of its board of directors or other governing body. The policy shall address situations where any of these individuals may directly or indirectly benefit, except as the entity's employees or members of the board or other governing body, from the entity's disbursing of State funds, and shall include actions to be taken by the

entity or the individual, or both, to avoid conflicts of interest and the appearance of impropriety.

Requested by: Representatives H. Hunter, Dockham, James, Ethridge, DeVane, Senator Martin of Pitt

-----DEPARTMENTAL REDUCTIONS/COUNTIES HARMLESS

Sec. 14. The Departments of Environment, Health, and Natural Resources, Economic and Community Development, Labor, and Agriculture shall not reduce continuing operations disbursements to local governments for the 1991-92 fiscal year and the 1992-93 fiscal year below the disbursement level for the 1990-91 fiscal year solely for the purpose of effectuating reductions to those Departments required by this act unless these reductions are specified in Aid-To-Counties line items in this act.

PART 6.-----STATE BOARD OF ELECTIONS

Requested by: Representatives Bowman, N.J. Crawford, Senator Martin of Guilford

-----CHANGE THE DATE OF THE PRESIDENTIAL PRIMARY TO THE DATE OF THE REGULAR STATEWIDE PRIMARY, AND ELIMINATE REIMBURSEMENT TO THE COUNTIES OF THE EXPENSE OF HOLDING A SEPARATE PRIMARY

Sec. 15. (a) G.S. 163-213.2 reads as rewritten:

" § 163-213.2. *Primary to be held; date; qualifications and registration of voters.*

~~On the second Tuesday in March, 1988,~~ Tuesday after the first Monday in May, 1992, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than the 21st day prior to the said primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

(b) G.S. 163-213.3 reads as rewritten:

" § 163-213.3. *Conduct of election.*

The presidential preference primary election shall be conducted and canvassed by the same authority and in the manner provided by law

for the conduct and canvassing of the primary election for the office of Governor and all other offices enumerated in G.S. 163-187 and under the same provisions stipulated in G.S. ~~163-188, 163-188, except that the earliest date by which absentee ballots shall be available shall be 35 days prior to the date of the primary.~~ The State Board of Elections shall have authority to promulgate reasonable rules and regulations, not inconsistent with provisions contained herein, pursuant to the administration of this Article."

(c) G.S. 163-213.4 reads as rewritten:

"§ 163-213.4. *Nomination by State Board of Elections.*

The State Board of Elections shall convene in Raleigh on the first Tuesday in ~~January~~ February preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have become eligible to receive payments from the Presidential Primary Matching Payment Account, as provided in section 9033 of the U.S. Internal Revenue Code of 1954, as amended. Immediately upon completion of these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with."

(d) G.S. 163-213.11 is repealed.

PART 7.-----OFFICE OF STATE AUDITOR

Requested by: Representatives Bowman, N.J. Crawford, Senator Martin of Guilford

-----DEPARTMENT OF REVENUE PERFORMANCE AUDIT

Sec. 16. The State Auditor shall conduct an operations performance audit of the Department of Revenue with particular attention to auditing the efficiency of information systems and the effectiveness of tax collection systems. The State Auditor shall report the results of the audit to the General Assembly on or before May 1, 1992.

PART 8.-----DEPARTMENT OF ADMINISTRATION

Requested by: Representatives Bowman, N.J. Crawford, Senator Martin of Guilford

-----BOARD OF SCIENCE AND TECHNOLOGY LIMITATION

Sec. 17. All funds appropriated in the 1991-92 fiscal year and the 1992-93 fiscal year for research grants for the Board of Science and Technology shall be used only for research grants and shall not be transferred to any other objects of expenditure.

Requested by: Representatives Bowman, N.J. Crawford, Senator Martin of Guilford

-----OFFICE OF STATE PERSONNEL DECENTRALIZATION

Sec. 18. (a) Effective January 1, 1993, the Office of State Personnel shall have decentralized the classification and salary administration functions of all State departments with more than 500 permanent full-time employees, subject to criteria and standards set by the State Personnel Commission. The Commission shall have the authority to suspend decentralization when agencies violate State Personnel Commission criteria and standards.

The Office of State Personnel shall report annually to the Joint Legislative Commission on Governmental operations and to the Fiscal Research Division by December 1 of each year, beginning on December 1, 1991, on its progress towards this decentralization.

(b) The Office of State Personnel shall present its plan for decentralization of the classification and salary administration functions to the State Personnel Study Commission or its successor. The State Personnel Study Commission shall consider those statutory changes as may facilitate decentralization and report its recommendations to the General Assembly by April 1, 1992.

Requested by: Representatives Bowman, N.J. Crawford, Senator Martin of Guilford

-----COUNCIL OF GOVERNMENT FUNDS

Sec. 19. (a) Of the funds appropriated in this Title to the Department of Administration, \$864,270 for 1991-92 fiscal year and \$864,270 for 1992-93 fiscal year shall only be used as provided by this section. Each regional council of government or lead regional organization is allocated up to \$48,015 each fiscal year, with the actual amount calculated as provided in subsection (b) of this section.

(b) The funds shall be allocated as follows: A share of the maximum \$48,015 each fiscal year shall be allocated to each county and smaller city based on the most recent annual estimate of the Office of State Budget and Management of the population of that county (less the population of any larger city within that county) or smaller city, divided by the sum of the total population of the region (less the population of larger cities within that region) and the total population of the region living in smaller cities. Those funds shall be paid to the regional council of government for the region in which that

city or county is located upon receipt by the Department of Administration of a resolution of the governing board of the county or city requesting release of the funds. If any city or county does not so request payment of funds by June 30 of a State fiscal year, that share of the allocation for that fiscal year shall revert to the General Fund.

(c) A regional council of government may use funds appropriated by this section only to assist local governments in grant applications, economic development, community development, support of local industrial development activities, and other activities as deemed appropriate by the member governments.

(d) Funds appropriated by this section may not be used for payment of dues or assessments by the member governments, and may not supplant funds appropriated by the member governments.

(e) As used in this section "Larger City" means an incorporated city with a population of 50,000 or over. "Smaller City" means any other incorporated city.

Requested by: Representatives Bowman, N.J. Crawford, Senators Martin of Guilford, Marvin

-----ALLOCATION OF RAPE CRISIS CENTER FUNDS

Sec. 20. All funds for the Rape Crisis Centers appropriated to the Department of Administration, the North Carolina Council for Women, for the 1991-92 fiscal year and the 1992-93 fiscal year in this Title shall be available to Rape Crisis Centers providing direct services to victims of sexual assault and rape prevention services. Funds shall be awarded according to criteria established by the Department of Administration. Grants shall be awarded by September 1 each fiscal year and the funds disbursed on a quarterly basis.

Requested by: Representatives Bowman, N.J. Crawford, Senators Martin of Guilford, Perdue

-----DOMESTIC VIOLENCE CENTER FUNDS

Sec. 21. The funds appropriated in this Title to the Department of Administration, the North Carolina Council for Women, for fiscal years 1991-92 and 1992-93 for domestic violence centers, shall be allocated equally among domestic violence centers in operation on July 1, 1990, that offer services including a hotline, transportation services, community education programs, daytime services, and call forwarding during the night and that fulfill other criteria established by the Department of Administration. Grants shall be awarded based on criteria established by the Department of Administration and disbursed on a quarterly basis. The North Carolina Coalition Against Domestic Violence, Incorporated, is eligible for a grant of \$10,000 under this section.

Requested by: Representatives Bowman, N.J. Crawford, Senator Martin of Guilford

-----MOTOR FLEET MANAGEMENT CHANGES/EFFICIENCY MEASURES/COMMUTING AND SPECIAL USE VEHICLE RESTRICTIONS

Sec. 22. G.S. 143-341(8)i. reads as rewritten:

- "i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:
 1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.
 2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.
 3. To require on a schedule determined by the Department all State agencies to transfer ownership, custody or control of any or all passenger motor vehicles within the ownership, custody or control of that agency to the Department, except those motor vehicles under the ownership, custody or control of the Highway Patrol or the State Bureau of Investigation which are used primarily for law-enforcement purposes, and except those motor vehicles under the ownership, custody or control of the Department of Crime Control and Public Safety for Butner Public Safety which are used primarily for law-enforcement, fire, or emergency purposes.
 4. To maintain, store, repair, dispose of, and replace state-owned motor vehicles under the control of the Department. The Department shall ensure that state-owned vehicles are not normally replaced until they have been driven for 90,000 miles or more.
 5. Upon proper requisition, proper showing of need for use on State business only, and proper showing of proof that all persons who will be driving the motor vehicle have valid drivers' licenses, to

assign suitable transportation, either on a temporary or permanent basis, to any State employee or agency. An agency assigned a motor vehicle may not allow a person to operate that motor vehicle unless that person displays to the agency and allows the agency to copy that person's valid driver's license. Notwithstanding G.S. 20-30(6), persons or agencies requesting assignment of motor vehicles may photostat or otherwise reproduce drivers' licenses for purposes of complying with this subpart.

As used in this subpart, 'suitable transportation' means the standard vehicle in the State motor fleet, unless special towing provisions are required by the employee or agency. The Department may not assign any employee or agency a motor vehicle that is not suitable. The Department shall not approve requests for vehicle assignment or reassignment when the purpose of that assignment or reassignment is to provide any employee with a newer or lower mileage vehicle because of his or her rank, management authority, or length of service or because of any non-job-related reason. The Department shall not assign 'special use' vehicles, such as four-wheel drive vehicles or law enforcement vehicles, to any agency or individual except upon written justification, verified by historical data, and accepted by the Secretary.

6. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its proportionate part of the cost of maintenance and operation of the motor pool.

The amount allocated and charged by the Department of Administration to State agencies to which transportation is furnished shall be at least as follows:

- I. Pursuit vehicles and full size ~~4-wheel~~ four-wheel drive vehicles -- \$.24/mile.
 - II. Vans and compact ~~4-wheel~~ four-wheel drive vehicles -- \$.22/mile.
 - III. All other vehicles -- \$.20/mile.
7. To adopt, with the approval of the Governor, reasonable rules for the efficient and economical

operation, maintenance, repair, and ~~replacement~~ replacement, as limited in paragraph 4. of this subdivision, of all state-owned motor vehicles under the control of the Department, and to enforce those rules; and to adopt, with the approval of the Governor, reasonable rules regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules. The Department, with the approval of the Governor, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Department the duty of enforcing the rules adopted by the Department pursuant to this paragraph. Any person who violates a rule adopted by the Department and approved by the Governor is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court.

- 7a. To adopt with the approval of the Governor and to enforce rules and to coordinate State policy regarding (i) the permanent assignment of state-owned passenger motor vehicles and (ii) the use of and reimbursement for those vehicles for ~~commuting~~, the limited commuting permitted by this subdivision. For the purpose of this subdivision 7a, 'state-owned passenger motor vehicle' includes any state-owned passenger motor vehicle, whether or not owned, maintained or controlled by the Department of Administration, and regardless of the source of the funds used to purchase it. Notwithstanding the provisions of G.S. 20-190 or any other provisions of law, all state-owned passenger motor vehicles are subject to the provisions of this subdivision 7a; no permanent assignment shall be made and no one shall be exempt from payment of reimbursement for commuting or from the other provisions of this subdivision 7a except as provided by this subdivision 7a. Commuting, as defined and regulated by this subdivision, is limited to those specific cases in which the Secretary has received and accepted written justification, verified by historical data. The Department shall not assign

any state-owned motor vehicle that may be used for commuting other than those authorized by the procedure prescribed in this subdivision.

A State-owned passenger motor vehicle shall not be permanently assigned to an individual who is likely to drive it on official business at a rate of less than ~~12,600 miles per year~~ 3,150 miles per quarter unless (i) the individual's duties are routinely related to public safety or (ii) the individual's duties are likely to expose him routinely to life-threatening situations. A State-owned passenger motor vehicle shall also not be permanently assigned to an agency that is likely to drive it on official business at a rate of less than ~~12,600 miles per year~~ 3,150 miles per quarter unless the agency can justify to the Division of Motor Fleet Management the need for permanent assignment because of the unique use of the vehicle. The Department of Administration shall verify, on a quarterly basis, that each motor vehicle has been driven at the minimum allowable rate. If it has not and if the department by whom the individual to which the car is assigned is employed or the agency to which the car is assigned cannot justify the lower mileage for the quarter in view of the minimum annual rate, the permanent assignment shall be revoked immediately.

Every individual who uses a State-owned passenger motor vehicle, pickup truck, or van to drive between his official work station and his home, shall reimburse the State for these trips at a rate computed by the Department. This rate shall approximate the benefit derived from the use of the vehicle as prescribed by federal law. Reimbursement shall be for 20 days per month regardless of how many days the individual uses the vehicle to commute during the month. Reimbursement shall be made by payroll deduction. Funds derived from reimbursement on vehicles owned by the Motor Fleet Management Division shall be deposited to the credit of the Division; funds derived from reimbursements on vehicles initially purchased with appropriations

from the Highway Fund and not owned by the Division shall be deposited in a Special Depository Account in the Department of Transportation, which shall revert to the Highway Fund; funds derived from reimbursement on all other vehicles shall be deposited in a Special Depository Account in the Department of Administration which shall revert to the General Fund. Commuting, for purposes of this paragraph, does not include those individuals whose office is in their home, as determined by the Department of Administration, Division of Motor Fleet Management. Also, this paragraph does not apply to the following vehicles: (i) clearly marked police and fire vehicles, (ii) delivery trucks with seating only for the driver, (iii) flatbed trucks, (iv) cargo carriers with over a 14,000 pound capacity, (v) school and passenger buses with over 20 person capacities, (vi) ambulances, (vii) hearses, (viii) bucket trucks, (ix) cranes and derricks, (x) forklifts, (xi) cement mixers, (xii) dump trucks, (xiii) garbage trucks, (xiv) specialized utility repair trucks (except vans and pickup trucks), (xv) tractors, (xvi) unmarked law-enforcement vehicles that are used in undercover work and are operated by full-time, fully sworn law-enforcement officers whose primary duties include carrying a firearm, executing search warrants, and making arrests, and (xvii) any other vehicle exempted under Section 274(d) of the Internal Revenue Code of 1954, and Federal Internal Revenue Services regulations based thereon. The Department of Administration, Division of Motor Fleet Management, shall report quarterly to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on individuals who use State-owned passenger motor vehicles, pickup trucks, or vans between their official work stations and their homes, who are not required to reimburse the State for these trips.

The Department of Administration shall revoke the assignment or require the Department owning the vehicle to revoke the assignment of a

State-owned passenger motor vehicle, pick-up truck or van to any individual who:

- I. Uses the vehicle for other than official business except in accordance with the commuting rules;
- II. Fails to supply required reports to the Department of Administration, or supplies incomplete reports, or supplies reports in a form unacceptable to the Department of Administration and does not cure the deficiency within 30 days of receiving a request to do so;
- III. Knowingly and willfully supplies false information to the Department of Administration on applications for permanent assignments, commuting reimbursement forms, or other required reports or forms;
- IV. Does not personally sign all reports on forms submitted for vehicles permanently assigned to him and does not cure the deficiency within 30 days of receiving a request to do so;
- V. Abuses the vehicle; or
- VI. Violates other rules or policy promulgated by the Department of Administration not in conflict with this act.

A new requisition shall not be honored until the Secretary of the Department of Administration is assured that the violation for which a vehicle was previously revoked will not recur.

The Department of Administration, with the approval of the Governor, may delegate, or conditionally delegate, to the respective heads of agencies which own passenger motor vehicles or to which passenger motor vehicles are permanently assigned by the Department, the duty of enforcing all or part of the rules adopted by the Department of Administration pursuant to this subdivision 7a. The Department of Administration, with the approval of the Governor, may revoke this delegation of authority.

Prior to adopting rules under this paragraph, the Secretary of Administration may consult with the Advisory Budget Commission.

8. To adopt and administer rules for the control of all state-owned passenger motor vehicles and to require State agencies to keep all records and make all reports regarding motor vehicle use as the Secretary deems necessary.
9. To acquire motor vehicle liability insurance on all State-owned motor vehicles under the control of the Department.
10. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Secretary, of prison labor for use in connection with the operation of a central motor pool and related activities.
11. To report annually to the General Assembly on any rules adopted, amended or repealed under paragraphs 3, 7, or 7a of this subdivision."

Requested by: Representatives Bowman, N.J. Crawford, Senator Martin of Guilford

-----MOTOR FLEET MANAGEMENT/RETURN OF GENERAL FUND INVESTMENT

Sec. 23. On April 1, 1992, the Department of Administration shall credit to the Office of State Treasurer, Nontax Revenues, the sum of \$2,000,000 and on June 15, 1992, the sum of \$1,500,000, unless the Department chooses to make a total payment of \$3,500,000 on April 1, 1992. These funds represent a partial return to the General Fund of its investment of \$5,100,000 in capital funds for the upgrading of the State motor fleet appropriated in Section 57 of Chapter 757 of the 1985 Session Laws.

Requested by: Representatives Bowman, N.J. Crawford, Senator Martin of Guilford

-----APPALACHIAN REGIONAL FUNDS SUBGRANTS

Sec. 23.1. Of the federal funds received by the Department of Administration for the fiscal biennium 1991-93 under the Appalachian Regional Commission Consolidated Technical Assistance Grant, the Department shall subgrant no less than fifty percent (50%) to eligible applicants whose service area or jurisdiction is wholly or partially located within counties of the Appalachian Region.

PART 9.-----DEPARTMENT OF STATE TREASURER

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Guilford

-----LOCAL GOVERNMENTS FUND COST OF LOCAL GOVERNMENT COMMISSION

Sec. 24. G.S. 105-213, as amended by Section 7 of Chapter 325 of the 1991 Session Laws, reads as rewritten:

" § 105-213. *Appropriation to counties and municipalities; use of appropriation.*

(a) There is annually appropriated from the General Fund to counties and municipalities the amount of revenue collected under this Article during the preceding fiscal year, plus an amount equal to forty percent (40%) of the tax collected on accounts receivable during the preceding fiscal year and less an amount equal to the costs during the preceding fiscal year of:

- (1) Refunds made during the fiscal year of taxes levied under this Article.
- (2) The Department of Revenue to collect and administer the taxes levied under this Article.
- (3) The Department of Revenue in performing the duties imposed by Article 15 of this Chapter.
- (4) The Property Tax Commission.
- (5) The Institute of Government in operating a training program in property tax appraisal and assessment.
- (6) The personnel and operations provided by the Department of State Treasurer for the Local Government Commission.

The appropriation shall be distributed by August 30 of each year. The appropriation shall be included in the Current Operations Appropriations Act.

To distribute the appropriation, the Secretary of Revenue shall keep a separate record by counties of the taxes collected under this Article and shall certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified.

The Secretary shall allocate the amount appropriated under this Article to the counties according to the county in which the taxes were collected. The Secretary shall then increase the amount allocable to each county by a sum equal to forty percent (40%) of the amount of tax on accounts receivable allocated to the county on the basis of collections. The amounts so allocated to each county shall in turn be divided between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each

during the fiscal year preceding the distribution. In dividing these amounts between each county and its municipalities, the Secretary shall treat taxes levied by a merged school administrative unit described in G.S. 115C-513 in a part of the unit located in a county as taxes levied by the county in which that part is located. For the purpose of computing the distribution of the intangibles tax to any county and the municipalities located in the county for any year with respect to which the property valuation of a public service company is the subject of an appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of federal law, and the Department of Revenue is restrained by operation of law or by a court of competent jurisdiction from certifying such valuation to the county and municipalities therein, the Department shall use the last property valuation of such public service company which has been so certified in order to determine the ad valorem tax levies applicable to such public service company in the county and the municipalities therein.

The chairman of each board of county commissioners and the mayor of each municipality shall report to the Secretary of Revenue information requested by the Secretary to enable the Secretary to distribute the amount appropriated by this section. If a county or municipality fails to make a requested report within the time allowed, the Secretary may disregard the county or municipality in distributing the amount appropriated by this section. The amount distributed to each county and municipality shall be used by the county or municipality in proportion to property tax levies made by it for the various funds and activities of the county or municipality, unless the county or municipality has pledged the amount to be distributed to it under this section in payment of a loan agreement with the North Carolina Solid Waste Management Capital Projects Financing Agency. A county or municipality that has pledged amounts distributed under this section in payment of a loan agreement with the Agency may apply the amount the loan agreement requires.

(b) For purposes of this section, the term 'municipality' includes any urban service district defined by the governing board of a consolidated city-county, and the amounts due thereby shall be distributed to the government of the consolidated city-county."

PART 10.-----DEPARTMENT OF REVENUE

Requested by: Representatives Bowman, N.J. Crawford, Senator Martin of Guilford

-----NO GAS TAX ON GAS FOR STATE VEHICLES

Sec. 25. (a) Article 36 of Chapter 105 of the General Statutes is amended by adding a new section to read:

" § 105-449A. Exemption of motor fuel used in State vehicles.

(a) Motor fuel purchased by the State for use in State-owned motor vehicles for State business is exempt from the excise tax levied by this Article if an invoice for the fuel stating the agency to whom the fuel was delivered, the price per gallon of the fuel excluding the tax, and the kind and quantity of fuel sold is furnished to the Secretary of Revenue. A person who holds a State contract for the sale of motor fuel to be used in State-owned motor vehicles for State business shall invoice motor fuel sold to the State for this purpose at the prevailing contract price, excluding the tax, and a person who does not hold a State contract for the sale of motor fuel to be used in State-owned motor vehicles for State business but who sells motor fuel for this purpose in quantities not sufficient to require a State contract shall invoice motor fuel sold to the State at the lowest informal bid price, excluding the tax.

(b) A person authorized to sell motor fuel to the State who paid the tax levied by this Article on fuel sold to the State for use in State-owned motor vehicles for State business may obtain a refund of the tax paid on the fuel upon filing an application for refund with the Secretary of Revenue and attaching an invoice, containing the information required in subsection (a) of this section, to the refund application. Upon receipt of a proper application and invoice, the Secretary shall refund the amount of tax paid.

(c) A person who makes a false invoice or application for refund under this section shall be guilty of a misdemeanor, punishable by a fine of up to five hundred dollars (\$500.00), imprisonment for up to two years, or both."

(b) This section becomes effective August 1, 1991, and applies to sales made on or after that date.

PART 11.-----OFFICE OF THE GOVERNOR

Requested by: Representatives Bowman, N.J. Crawford. Senators Basnight, Plyler

----- COMPUTER RESERVE FUND

Sec. 26. (a) The funds appropriated in this Title to the Office of State Budget and Management for a Computer Reserve shall be used by the Office of State Budget and Management to address critical computer needs when no alternative source of funds is available. Critical computer needs for which Computer Reserve funds may be used pursuant to this section are defined as those needs that involve one or more of the following factors:

- (1) An explicit provision in federal or State law or rule, or a federal grant-in-aid condition, that can only be satisfied

through investment in additional data processing equipment or software:

- (2) A failure or breakdown of existing equipment that substantially degrades current operations, when repair of existing equipment is uneconomical;
- (3) Research or instructional activity of an ongoing nature that serves a vital public interest whose continuation depends upon the acquisition of data processing equipment or software; and
- (4) A direct relationship between the proposed acquisition to ongoing maintenance or continued operation of existing minicomputers, minicomputer networks, mainframes, or mainframe networks, which renders the proposed acquisition essential to the existing system.

The Office of State Budget and Management shall submit a report showing disbursements from or encumbrances upon the Computer Reserve and the reasons for the disbursement or encumbrance to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Information Technology Commission at the conclusion of each quarter of each fiscal year of the 1991-93 fiscal biennium.

At the end of each fiscal year, unexpended funds in the Computer Reserve shall revert to the General Fund.

(b) Notwithstanding the provisions of G.S. 143-16.3. and G.S. 143-23(a1), State departments may use funds from any source available to them and may transfer funds from other line items in their budgets to purchase additional data processing equipment and software.

(c) This section does not apply to The University of North Carolina or its constituent institutions, the Department of Community Colleges, or the Department of Public Instruction.

Requested by: Representatives Nesbitt, Diamont, McAllister, Senator Martin of Guilford

-----IDENTIFICATION OF POSITIONS, PROGRAMS, AND SALARY LINE ITEMS TO BE REDUCED

Sec. 27. (a) To effect the reductions in departmental budgets required by this Title for the 1991-93 fiscal biennium, the Office of State Budget and Management shall freeze all new hires for these departments on July 1, 1991, allow the departments 30 days to identify the positions, programs, and salary line items affected, and transfer the reductions to those line items from which positions will be eliminated.

(b) The positions identified pursuant to subsection (a) of this section shall remain vacant for the 1991-92 fiscal year and shall not be reported in the base budget requested by the departments for the 1992-93 fiscal year, shall remain as permanent cuts, and shall be abolished.

(c) The departments shall report, by August 15, 1991, to the appropriate House and Senate Appropriations subcommittees, to the chairmen of the House and Senate Appropriations Committees, and to the Joint Legislative Commission on Governmental Operations the particular line items in their departmental budgets that reflect the reductions required by this section.

(d) No positions in the Sickle Cell Activities of the Sickle Cell and Genetic Counseling Program of the Department of Environment, Health, and Natural Resources shall be subject to this section.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----RESERVE FOR LOCAL TAX REIMBURSEMENTS

Sec. 28. (a) There is created in the Office of State Budget and Management a special reserve to be known as the Reserve for Reimbursements to Local Governments and Shared Tax Revenues. Funds in the reserve shall be distributed to local governments as provided by statute.

(b) G.S. 105-113.82 reads as rewritten:

" § 105-113.82. Appropriation of amount equal to part of beer and wine taxes.

(a) Amount. Method. -- An amount equal to the following percentages of the net amount of excise taxes collected, during the period that ~~begins the preceding October 1 and ends September 30, began October 1, 1989, and ended September 30, 1990,~~ on the sale of malt beverages and wine, less the amount of the net proceeds credited to the Department of Agriculture under G.S 105-113.81A, is annually appropriated from the General Fund to the counties and cities in which the retail sale of these beverages is authorized:

- (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23 $\frac{3}{4}$ %);
- (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and
- (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount

appropriated, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount appropriated, that portion to be determined on the basis of population. The amount of the appropriation to be distributed under subdivisions (1), (2), and (3) shall be computed separately.

(b) Reduction in Appropriation. -- Where the sale of malt beverages, unfortified wine, or fortified wine is prohibited in a defined area of a city or county in which the sale of the beverage is authorized, the amount that would otherwise be appropriated to the city or county on the basis of population under subsection (a) shall be reduced in the same ratio that the area of the defined area bears to the total area of the city or county, unless the defined area is a city. If the defined area in a county is a city, the reduction in the amount that would otherwise be appropriated to the county under subsection (a) shall be based on population instead of area.

(c) Exception. -- Notwithstanding subsection (a), in a county in which ABC stores have been established by petition, the amount appropriated shall be distributed as though the entire county had approved the retail sale of a beverage whose retail sale is authorized in part of the county.

(d) Time. -- The appropriation shall be distributed to cities and counties within 60 days after September 30 of each year.

(e) Population Estimates. -- To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.

(f) City Defined. -- As used in this section, the term 'city' means a city as defined in G.S. 153A-1(1) or an urban service district defined by the governing body of a consolidated city-county.

(g) Use of Funds. -- Funds appropriated to a county or city under this section may be used for any public purpose.

(h) Act. -- The appropriation made by this section shall be included in the Current Operations Appropriations Act."

(c) G.S. 105-116(d) reads as rewritten:

"(d) Appropriation. There is annually appropriated from the General Fund to each municipality an amount that equals three and nine hundredths percent (3.09%) of the taxable gross receipts derived, ~~from April 1 of the preceding fiscal year to the following March 31, April 1, 1990, to March 31, 1991,~~ by an electric power company and a natural gas company from sales within the municipality of the commodities and services described in subsection (a). The Secretary of Revenue shall transfer the amount appropriated to a municipality in

quarterly installments on or before September 15, December 15, March 15, and June 15 ~~based on in proportion to~~ the taxable gross receipts derived within the municipality during the preceding calendar quarter. If a company's report does not state the company's taxable gross receipts derived within a municipality, the Secretary of Revenue shall determine a practical method of allocating part of the company's taxable gross receipts to the municipality. Before transferring the amount appropriated by this subsection, the Secretary of Revenue shall certify the amount to be transferred distributed to the State Controller. The appropriation made by this subsection shall be included in the Current Operations Appropriations Act.

As used in this subsection, the term 'municipality' includes an urban service district defined by the governing board of a consolidated city-county. The amount due an urban service district shall be distributed to the governing board of the consolidated city-county."

(d) G.S. 105-120(c) reads as rewritten:

"(c) Appropriation. There is annually appropriated from the General Fund to each municipality an amount that equals three and nine hundredths percent (3.09%) of the taxable gross receipts derived ~~from April 1 of the preceding fiscal year to the following March 31, April 1, 1990, to March 31, 1991,~~ from local telecommunications service provided within the municipality. The Secretary of Revenue shall transfer the amount appropriated to a municipality in quarterly installments on or before September 15, December 15, March 15, and June 15 ~~based on in proportion to~~ the taxable gross receipts derived within the municipality during the preceding calendar quarter. If a company's report does not state the company's taxable gross receipts derived within a municipality, the Secretary of Revenue shall determine a practical method of allocating part of the company's taxable gross receipts to the municipality. Before transferring the amount appropriated by this subsection, the Secretary of Revenue shall certify the amount to be transferred to the State Controller. The appropriation made by this subsection shall be included in the Current Operations Appropriations Act.

As used in this subsection, the term 'municipality' includes an urban service district defined by the governing board of a consolidated city-county. The amount due an urban service district shall be distributed to the governing board of the consolidated city-county."

(e) G.S. 105-164.44C reads as rewritten:

"§ 105-164.44C. *Reimbursement for sales taxes on food stamp foods and supplemental foods.*

~~As soon as practicable after July 1 of each year, the Secretary shall determine from available information~~ There is annually appropriated to each county and the cities in the county an amount equal to the

amount of local sales taxes that would have been collected in ~~each~~ the county during the ~~preceding~~ 1989-90 fiscal year on foods purchased with food stamp coupons or supplemental food instruments in the county, had these foods not been exempt from tax under G.S. 105-164.13(38). The Secretary shall ~~then~~ distribute the amounts determined to be due each county between the county and the cities located in the county in accordance with the method by which local sales and use taxes are distributed in that county. In order to pay for the reimbursement under this section and the cost to the Department of Revenue for administering the reimbursement, the Secretary of Revenue shall draw from the Local Government Tax Reimbursement Reserve an amount equal to the amount of the reimbursement and the cost of administration."

(f) G.S. 105-198 reads as rewritten:

"§ 105-198. *Intangible personal property.*

The intangible personal properties enumerated and defined in this Article are classified under authority of Section 2(2), Article V of the North Carolina Constitution. The taxes are levied for the purposes stated in this ~~Article, Subchapter.~~"

(g) G.S. 105-213, as amended by Section 7 of Chapter 325 of the 1991 Session Laws, reads as rewritten:

"§ 105-213. *Appropriation to counties and municipalities; use of appropriation.*

(a) There is annually appropriated from the General Fund to counties and municipalities the net amount of revenue collected under this Article during the ~~preceding~~ 1989-90 fiscal year, plus an amount equal to forty percent (40%) of the tax collected on accounts receivable during the ~~preceding~~ 1989-90 fiscal year and less an amount equal to the costs during the preceding fiscal year of:

- (1) Refunds made during the fiscal year of taxes levied under this Article.
- (2) The Department of Revenue to collect and administer the taxes levied under this Article.
- (3) The Department of Revenue in performing the duties imposed by Article 15 of this Chapter.
- (4) The Property Tax Commission.
- (5) The Institute of Government in operating a training program in property tax appraisal and assessment.

The appropriation shall be distributed by August 30 of each year. The appropriation shall be included in the Current Operations Appropriations Act.

The appropriation shall be allocated among the counties in proportion to the amount of taxes collected under this Article in each county during the preceding fiscal year. ~~To distribute the~~

~~appropriation, the~~ The Secretary of Revenue shall keep a separate record by counties of the taxes collected under this Article and shall ~~certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified.~~ Article. The Secretary shall allocate the amount appropriated under this Article section to the counties according to the county in which the taxes were collected. ~~The Secretary shall then increase the amount allocable to each county by a sum equal to forty percent (40%) of the amount of tax on accounts receivable allocated to the county on the basis of collections.~~ The amounts so allocated to each county shall in turn be ~~divided~~ allocated between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. In dividing these amounts between each county and its municipalities, the Secretary shall treat taxes levied by a merged school administrative unit described in G.S. 115C-513 in a part of the unit located in a county as taxes levied by the county in which that part is located. After making these allocations, the Secretary of Revenue shall certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified. The amount based on forty percent (40%) of the tax collected on accounts receivable shall be drawn from the Local Government Tax Reimbursement Reserve and the amount based on the net amount of revenue collected under this Article shall be drawn from the Local Government Tax Sharing Reserve.

For the purpose of computing the distribution of the intangibles tax to any county and the municipalities located in the county for any year with respect to which the property valuation of a public service company is the subject of an appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of federal law, and the Department of Revenue is restrained by operation of law or by a court of competent jurisdiction from certifying such valuation to the county and municipalities therein, the Department shall use the last property valuation of such public service company which has been so certified in order to determine the ad valorem tax levies applicable to such public service company in the county and the municipalities therein.

The chairman of each board of county commissioners and the mayor of each municipality shall report to the Secretary of Revenue information requested by the Secretary to enable the Secretary to ~~distribute~~ allocate the amount appropriated by this section. If a county

or municipality fails to make a requested report within the time allowed, the Secretary may disregard the county or municipality in ~~distributing~~ allocating the amount appropriated by this section. The amount distributed to each county and municipality shall be used by the county or municipality in proportion to property tax levies made by it for the various funds and activities of the county or municipality, unless the county or municipality has pledged the amount to be distributed to it under this section in payment of a loan agreement with the North Carolina Solid Waste Management Capital Projects Financing Agency. A county or municipality that has pledged amounts distributed under this section in payment of a loan agreement with the Agency may apply the amount the loan agreement requires.

(b) For purposes of this section, the term 'municipality' includes any urban service district defined by the governing board of a consolidated city-county, and the amounts due thereby shall be distributed to the government of the consolidated city-county."

(h) G.S. 105-213.1 reads as rewritten:

" § 105-213.1. *Additional appropriation to counties and municipalities.*

(a) Appropriation. -- As soon as practicable after July 1 of 1986, the Secretary of Revenue shall allocate for distribution to each county and the municipalities located in the county the amount allocated to that county from taxes levied under G.S. 105-199, 105-200, and 105-205 for the last taxable year in which these taxes were levied, plus or minus a sum that equals the product of this amount and the percentage by which State disposable personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Thereafter, by August 30 of ~~each year~~, 1987, 1988, 1989, and 1990, the Secretary shall allocate to each county the amount of funds allocated to the county under this section the preceding year, plus or minus a sum that equals the product of this amount and the percentage by which State disposable personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Thereafter, by August 30 of each year, the Secretary shall allocate to each county the amount of funds allocated to the county under this section in 1990.

Amounts allocated to a county under this section shall in turn be divided and distributed between the county and the municipalities located in the county in accordance with the method of allocating intangible tax revenue between a county and the municipalities located in the county provided in G.S. 105-213.

(b) Restrictions on Use. -- Amounts distributed to a county or a municipality under this section are subject to the same restrictions as amounts distributed under G.S. 105-213.

(c) Municipality Defined. -- As used in this section, the term 'municipality' has the same meaning as in G.S. 105-213.

(d) Source. -- Funds distributed under this section shall be drawn from the Local Government Tax Reimbursement Reserve."

(i) G.S. 105-277A(b) reads as rewritten:

"(b) First Per Capita Distribution. -- As soon as practicable after January 1 of 1989, the Secretary shall distribute to each taxing unit the unit's per capita share of the sum of fifteen million seven hundred forty-five thousand dollars (\$15,745,000). Thereafter, as soon as practicable after January 1 of ~~each year~~ 1990 and 1991, the Secretary shall distribute to each taxing unit the unit's per capita share of an amount equal to the sum distributed to all taxing units the previous year under this subsection plus or minus the product of the sum distributed the previous year and the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Thereafter, as soon as practicable after January 1 of each year the Secretary shall distribute to each taxing unit the unit's per capita share of the sum that this subsection provided was to be distributed to all taxing units in 1991.

To make the per capita distributions required by this subsection, the Secretary shall first allocate the sum to be distributed among the counties on a per capita basis. The Secretary shall then compute a per capita distributable amount for each county by dividing the amount allocated to a county by the total population of the county, plus the population of any incorporated towns and cities located in the county. Each taxing unit in a county, including the county itself, shall receive the product of the population of the taxing unit and the per capita distributable amount for that county.

A city or county that receives funds under this subsection and that collects taxes for another taxing unit shall distribute part of the taxes received by it to the taxing unit for which it collects tax. The distribution shall be made on the basis of the proportionate amount of ad valorem taxes levied, for the most recent fiscal year beginning July 1, by the city or county and by all the taxing units for which the city or county collects tax. This distribution shall be made as soon as practicable after a city or county receives funds from the State under this section."

(j) G.S. 105-277A(f) reads as rewritten:

"(f) Source of Funds. -- ~~The Secretary of Revenue shall~~ To pay for the distribution required by this section and the cost of making the distribution as follows:

(1) ~~For the distribution made in 1989, the Secretary shall draw an amount equal to the amount distributed and the cost of making the distribution first from the Inventory Tax Reimbursement Fund created in Section 15.1 of the School Facilities Finance Act of 1987, until it is exhausted, and then the remainder of that amount from collections received by the Department under Division I of Article 4 of this Chapter.~~

(2) ~~For distributions made in subsequent years,~~
distribution, the Secretary shall draw from the Local Government Tax Reimbursement Reserve ~~for the distribution required by this section~~ an amount equal to the amount distributed and the cost of making the distribution."

(k) G.S. 105-277.1A reads as rewritten:

"§ 105-277.1A. *Property classified for taxation at reduced valuation; duties of tax collectors; reimbursement of localities for portion of tax lost.*

(a) ~~On September 1 of each year, 1, 1990,~~ the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue a list containing the name and address of each person who has qualified in that year for the exemption provided in G.S. 105-277.1. The list shall also contain for each name the total amount of property exempted, the tax rate the property is subject to, and the product obtained by multiplying those two numbers by each other. The lists shall be accompanied by an affidavit attesting to the accuracy of the list, and shall all be on a form prescribed by the Secretary of Revenue.

(b) In addition to the list required by subsection (a) of this section, the county or city may provide a supplemental list on December 1.

(c) The Secretary of Revenue may, for cause, grant an extension for the submission of the list required by this section.

(d) ~~After receiving a certified list under subsections (a) through (c) of this section, Before May 31, 1991,~~ the Secretary of Revenue shall, ~~within 60 days, pay~~ shall distribute to the county or city fifty percent (50%) of the total for the entire list of the product obtained by multiplying the tax exemption for each taxpayer times the applicable tax rate. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city that was entitled to receive a distribution under this section in 1991 the amount it was entitled to receive in 1991.

(e) Any funds received by any county or city pursuant to this section because the county or city was collecting taxes for another unit

of government or special district shall be credited to the funds of that other unit or district in accordance with regulations issued by the Local Government Commission.

(f) In order to pay for the reimbursement under this section and the cost to the Department of Revenue ~~for~~ of administering the reimbursement, the Secretary of Revenue shall draw from the Local Government Tax Reimbursement Reserve an amount equal to the reimbursement and the cost of administration."

PART 12.-----OFFICE OF THE STATE CONTROLLER

Requested by: Representatives Bowman, N.J. Crawford, Senator Martin of Guilford

-----STATE INFORMATION PROCESSING SYSTEM'S AMENDED RATE SCHEDULE

Sec. 29. The Office of the State Controller shall adopt an amended rate schedule that will reduce rates for the 1991-93 fiscal biennium to agencies for data processing and data processing related services by five percent (5%) below what the same agencies were charged for the 1990-91 fiscal year.

The rates set by this amended rate schedule shall not be increased during the 1991-93 fiscal biennium.

PART 13.-----GENERAL ASSEMBLY

Requested by: Representatives Bowman, N. J. Crawford, Senator Martin of Guilford

-----STUDY COMMISSION ON COMPUTER SERVICES

Sec. 30. (a) There is created a Computer Services Study Commission, an independent commission, to study the organization, management, and cost of State computer services. The Commission shall consist of twelve members. The Speaker of the House of Representatives shall appoint six members, four who shall be members of the House of Representatives and two who shall have a background in and familiarity with information systems or data communications. The President Pro Tempore of the Senate shall appoint six members, four who shall be members of the Senate and two who shall have a background in and familiarity with information systems or data communications. Initial appointments shall be made within 30 days following adjournment of the 1991 Session of the General Assembly for a period of more than 10 days. Members of the Study Commission shall not be employed by, provide consulting services to, or serve on the board of directors or other governing body of any information systems, computer hardware, or telecommunications

enterprise currently doing business with the State of North Carolina. Vacancies shall be filled by the official who made the initial appointment using the same criteria as provided by this subsection.

(b) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint a cochair of the Commission from their appointees. The cochairs shall call the first meeting and preside at alternate meetings.

(c) The Study Commission on Computer Services shall examine the functions, powers, and effectiveness of the Information Technology Commission, the organization and operation of the State Information Processing Service, the processes by which long term plans for computer applications are devised and approved, the policies and practices applied to hardware and software procurement, and such other issues as may, in the judgment of the Commission, relate to the cost of computer usage in State government.

(d) Subject to the approval of the Legislative Services Commission, the professional and clerical staff of the Legislative Services Office shall be available to the Study Commission. Upon request of the Study Commission or its staff, all State departments and agencies shall furnish to the Study Commission any information in their possession or available to them. The Study Commission may acquire by contract or purchase such other expertise or information as may be necessary to complete its report.

(e) Members of the Study Commission who are also members of the General Assembly shall be paid subsistence and travel expenses at the rate set forth in G.S. 120-3.1. Members of the Study Commission who are officials or employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other members of the Study Commission shall be paid per diem and allowances at the rates set forth in G.S. 138-5.

(f) Of the funds appropriated from the General Fund to the General Assembly, the sum of \$10,000 for the 1991-92 fiscal year and the sum of \$20,000 for the 1992-93 fiscal year shall be allocated for this study.

(g) The Study Commission on Computer Services shall report its findings and recommendations to the General Assembly upon the convening of the 1993 Session.

Requested by: Representatives Bowman, N.J. Crawford, Huffman, Senator Martin of Guilford

-----LEGISLATIVE SERVICES COMMISSION/REVIEW OF
METHODS TO ENCOURAGE AND REWARD EMPLOYEE
LONGEVITY

Sec. 30.1. The Legislative Services Commission shall review various methods of encouraging and rewarding employee longevity and superior performance.

PART 14.-----PUBLIC SCHOOLS

Requested by: Representatives Payne, Fussell, Barnes, Senators Ward, Warren

-----CONSOLIDATE SCHOOL ADMINISTRATOR ALLOTMENTS

Sec. 31. The State Board of Education shall consolidate the allotment of assistant and associate superintendents and supervisors and shall convert the allotment from a position allotment to a dollar allotment.

Requested by: Representatives Fussell, Payne, Barnes, Senators Ward, Warren

-----DRIVER TRAINING PROGRAM

Sec. 32. (a) G.S. 20-88.1 reads as rewritten:

" § 20-88.1. ~~Driver training and safety education.~~

(a) In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of this State for all ~~persons of provisional license age. This program shall be made available to all physically and mentally qualified persons of provisional license age, including public school students, nonpublic school students and out-of-school youths under 18 years of age, who~~ (i) are older than 14 years and six months, (ii) are approved by the principal of the school, pursuant to rules adopted by the State Board of Education, (iii) are enrolled in a public or private high school within the State, and (iv) have not previously enrolled in the program. The State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds that become available for its use for said purpose. The ~~drivers'~~ driver education program established pursuant to this section shall include instructions on the rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles, including the 'international symbol of accessibility' and other symbols and devices as provided in Article 2A of this Chapter. In addition, this program shall include at least six hours of instruction on the offense of driving while impaired and related subjects.

(b) The State Board of Education shall adopt a salary ~~schedule~~ range for ~~Driver's Education Training Instructors, driver education~~

instructors who are public school employees and who do not hold teacher certificates.

Driver education instructors who are public school employees and who hold teacher certificates shall be paid on the teacher salary schedule. A day of employment for driver education instructors who hold teacher certificates shall be the same number of hours required of all regular classroom teachers as established by the local board of education. No educational degree requirement may be a criterion used in setting salaries. The State Board of Education shall report the salary schedule and criteria developed for a drivers' education program to the 1983 General Assembly, Second Session 1984.

(b) The State Board of Education shall adopt rules to permit local boards of education to enter contracts with public or private entities to provide a program of driver education at public high schools. All driver education instructors shall meet the requirements established by the State Board of Education; provided, however, driver education instructors shall not be required to hold teacher certificates.

(c) All expenses incurred by the State in carrying out the provisions of this section shall be paid out of the General Highway Fund."

(b) G.S. 115C-215 reads as rewritten:

"§ 115C-215. Instruction in driver training and safety education.

There shall be organized and administered under the general supervision of the Superintendent of Public Instruction a program of driver training and safety education in the public schools of this State. said courses to be noncredit courses taught by instructors approved by the Department of Public Instruction, who meet the requirements established by the State Board of Education. Instructors shall not be required to hold teacher certificates."

(c) G.S. 115C-216 reads as rewritten:

"§ 115C-216. Boards of education required to provide courses in operation of motor vehicles.

(a) Course of Training and Instruction Required in Public High Schools. -- The State Board of Education and local boards of education are hereby required to provide as a part of the program of the public high schools in this State a course of training and instruction in the operation of motor vehicles and to make such courses available for all persons of provisional license age, including public school students, nonpublic school students and out-of-school youths under 18 years of age whose physical and mental qualifications meet license requirements, in conformance with course requirements and funds made available under the provisions of G.S. 20-88.1 or as hereinafter provided or both, vehicles, in accordance with G.S. 20-88.1.

(b) Inclusion of Expense in Budget. -- The local boards of education of every local school administrative unit are hereby authorized to include as an item of instructional service and as a part of the current expense fund of the budget of the several high schools under their supervision, the expense necessary to install and maintain such a course of training and instructing eligible persons in such schools in the operation of motor vehicles.

~~(c) Appropriations. -- The boards of county commissioners in the several counties of the State and the governing bodies of all municipalities having power to appropriate and raise money by taxation and otherwise are hereby authorized to appropriate funds necessary to pay the expenses necessary to install and maintain in any public high school under their supervision a course of training and instruction for eligible students in such schools in the operation of motor vehicles, whether or not the county board of education or administrative unit shall have included the cost of the same in its budget request when submitted for approval.~~

~~(d) How Moneys Appropriated May Be Provided. -- The board of county commissioners and the governing bodies of all municipalities having power to appropriate money and to levy taxes and raise money are hereby authorized to allocate and expend the moneys appropriated pursuant to this section or other acts of the General Assembly and the moneys provided by taxation, by sale or rental of any real or personal property owned by such county or other taxing unit, or by use of any surplus funds on hand or acquired from any source, for the purpose of funding any such course of instruction and training in any public high school. The special approval of the General Assembly is hereby given for the levying of taxes for such purpose and for providing funds for such purpose by the other means herein mentioned.~~

~~(e) Content of Course; What Persons Eligible. -- The words "a course of training and instruction for eligible persons in the operation of motor vehicles" as applied to this section means such course of instruction in the operation of motor vehicles prescribed or approved by the Department of Public Instruction, provided that every such course shall include actual operation of motor vehicles by the persons eligible for same, under the supervision of a qualified instructor. Only such persons older than 14 years and six months, who are approved by the principal of the school, shall be eligible for such course of instruction, subject to rules and regulations prescribed by the Department of Public Instruction.~~

~~(f) Acts Ratified and Confirmed. -- The acts of all boards of county commissioners and the governing bodies of all municipalities, the acts of all local boards of education, and the acts of the State Board of Education heretofore done in connection with providing courses of~~

~~training and instruction in the operation of motor vehicles in this State, including the appropriation and expenditure of funds for such purpose, are hereby ratified and confirmed."~~

(d) The State Board of Education shall convert the allotments of funds for months of employment for driver education instructors and for loan car fees to dollar allotments. Dollar allotments shall not exceed funds appropriated by the General Assembly for this purpose.

Requested by: Representatives Fussell, Payne, Barnes, Senators Ward, Warren

-----COMMUNITY SCHOOLS FUNDS

Sec. @. The State board of education shall allocate community schools funds on a per county basis. If a county contains more than one local school administrative unit, the community schools funds allotted for the county shall be prorated on the basis of average daily membership to each school unit within a county; provided, that these funds may be combined in a manner agreed upon by all units in the county as the most effective use.

Each county shall receive the same amount that a county school administrative unit received for this purpose for the 1990-91 fiscal year. If community schools funds are not adequate to fund this allocation fully for the 1991-92 fiscal year, the State Board of Education shall use funds from aid to local school administrative units for this purpose.

Requested by: Representatives Payne, Fussell, Barnes, Senators Ward, Warren

-----DROPOUT PREVENTION/IN-SCHOOL SUSPENSION

Sec. 33. Of the funds appropriated to the Department of Public Education for aid to local school administrative units for the Dropout Prevention/In-School Suspension Program, the sum of \$200,000 for each fiscal year of the 1991-93 fiscal biennium may be used to fund eight pilot public/private educational compacts to bring together on an ongoing basis representatives from public education, community colleges, higher education, and business and industry to determine how to improve attendance, prevent dropping out of school, increase academic performance, and increase participation in higher education and the work force by at-risk students. The funds may also be used to fund eight parental involvement pilot programs, and to provide for operating costs, workshops, and committee meetings for the State Department of Public Instruction's dropout prevention staff.

The State Board of Education may adopt rules governing the use of these funds. These funds are to be part of the continuation budget in the next fiscal biennium.

Requested by: Representatives Payne, Fussell, Barnes, Senators Ward, Warren

-----DROPOUT PREVENTION COORDINATORS

Sec. 34. Of the funds appropriated to the Department of Public Education for aid to local school administrative units for dropout prevention, the State Board of Education shall allocate to the Department of Public Instruction up to \$225,000 for the 1991-92 fiscal year and up to \$225,000 for the 1992-93 fiscal year for the three dropout prevention coordinators. The State Superintendent shall assign the dropout prevention coordinators to designated areas within the State and shall develop job descriptions for them. These funds are to be part of the continuation budget in the next biennium.

Requested by: Representatives Payne, Fussell, Barnes, Senators Ward, Warren

-----PROJECT TEACH FUNDS

Sec. 35. Of the funds appropriated to the Department of Public Education for the 1991-93 fiscal biennium for aid to local school administrative units, the State Board of Education shall allocate to the Department of Public Instruction \$73,000 for the 1991-92 fiscal year and \$73,000 for the 1992-93 fiscal year to be used to:

- (1) Maintain the Project Teach Initiative in the Robeson, Pitt, Cumberland, Warren, Halifax, Guilford, Vance, Northampton, Anson and Bertie County Schools, and the Durham, High Point, and Greensboro City Schools.
- (2) Expand the project in at least two school systems to focus on parents of students in the seventh grade so as to involve parents in the coaching and support of promising minority young people.

These funds are to be part of the continuation budget in the next fiscal biennium.

Requested by: Representatives Payne, Fussell, Barnes, Senators Ward, Warren

-----ADVANCED TRAINING FOR FOREIGN LANGUAGE TEACHERS

Sec. 36. Of the funds appropriated to the Department of Public Education for aid to local school administrative units, the State Board of Education may allocate to the Department of Public Instruction \$300,000 each year of the 1991-93 biennium for two positions, support expenses, and workshops to provide intensive advanced training for teachers who teach foreign languages.

Requested by: Representatives J.W. Crawford, Hardaway, H. Hunter, Fussell, Payne, Barnes, Senators Ward, Warren

-----CONTINUE MODEL TEACHER EDUCATION CONSORTIUM

Sec. 36.1. Of the funds appropriated to the Department of Public Education for the 1991-92 fiscal year for aid to local school administrative units, the State Board of Education shall use \$150,000 for the 1991-92 fiscal year for the model teacher education consortium established in Section 72 of Chapter 752 of the 1989 Session Laws. Of these funds, up to \$30,000 may be used for administrative purposes.

Requested by: Representatives Fussell, Payne, Barnes, Senators Cooper, Ward

-----FUNDING FOR CITY SCHOOL SYSTEMS

Sec. 37. (a) If two or more local school administrative units are consolidated and merged into one unit, the allotments of the following positions shall not be less than those same allotments to the separate units for the first and second full fiscal years of the consolidation and merger and shall be used for the continuation of the positions and programs, except as specifically authorized by the State Board of Education: (i) superintendents, (ii) associate and assistant superintendents, (iii) supervisors, and (iv) maintenance supervisors.

(b) Effective upon ratification of this act, Chapter 115C of the General Statutes is amended by adding a new section to read:

" § 115C-68.1. Merger of units by the board of commissioners.

(a) The board of commissioners of a county in which two or more local school administrative units are located, but all are located wholly within the county, may adopt a plan for the consolidation and merger of the units into a single countywide unit.

The plan adopted under this subsection shall require that the county adopting the plan provide local funding per average daily membership to the resulting local school administrative unit for subsequent years of at least the highest level of any local school administrative unit in the county during the preceding five fiscal years before the merger.

The board of commissioners shall forward a copy of the plan it adopts to the boards of education of all local school administrative units located within the county, immediately upon adoption.

(b) The boards of commissioners of two counties in which one local school administrative unit is located in both counties may jointly adopt plans for each of their counties, including a plan of consolidation and merger for such unit that is located in more than one county. The results of such consolidation and merger shall be that there is only one countywide local school administrative unit in each county, or that the entirety of the unit located within two counties

is merged and consolidated with the county unit of one of the two counties. Such plans shall also merge and consolidate any other city school administrative unit located wholly within one of the two counties. Within the two-county area, all the plans shall take effect on the same day.

The plans jointly adopted under this subsection shall require that the counties jointly adopting the plans provide local funding per average daily membership to the resulting local school administrative units for subsequent fiscal years of at least the highest level of any local school administrative unit being merged during the preceding five fiscal years before the merger.

The boards of commissioners of each of the two counties shall forward copies of the plans they adopt to the boards of education of all local school administrative units located within the county, immediately upon adoption.

(c) The plans under this section shall be prepared and approved in accordance with G.S. 115C-67 as provided by general law, or G.S. 115C-68 as provided by general law, as applicable, except that the county and city boards of education shall not participate by preparing, entering into, submitting, or agreeing to a plan, and the plan shall not be contingent upon approval of the voters.

(d) For the purpose of this section, local funding per average daily membership means the budgeted local expense per average daily membership. The State Board of Education shall establish guidelines for the computation of this amount and the amount shall be set out in the plan for consolidation and merger.

(e) If the State Board of Education fails to approve a plan submitted to it under this section, such failure to approve does not preclude the approval of the plan by the General Assembly by local act."

(c) Effective upon ratification of this act, Chapter 115C of the General Statutes is amended by adding a new section to read:

" § 115C-68.2. Merger of units by the local boards of education.

If a city board of education notifies the State Board of Education that it is dissolving itself, the State Board of Education shall adopt a plan of consolidation and merger of that city school administrative unit with the county school administrative unit in the county in which the city unit is located; provided, however, if a city school administrative unit located in more than one county notifies the State Board of Education that it is dissolving itself, the State Board shall adopt a plan that divides the city unit along the county line and consolidates and merges the part of the city unit in each county with the county unit in that county and the plans shall take effect on the same day. The plans shall be prepared and approved in accordance with G.S. 115C-67 as provided by general law, and G.S. 115C-68 as provided by general

law, as applicable, except that the county and city boards of education and the boards of commissioners shall not participate by preparing, entering into, submitting, or agreeing to a plan, and the plan shall not be contingent upon approval by the voters."

(d) No liability for any supplemental school tax levied under local act or G.S. 115C-501 to G.S. 115C-511 that attached prior to the date on which a levy is discontinued pursuant to a plan for merger for local school administrative units under G.S. 115C-68.1 or G.S. 115C-68.2 is discharged as a result of the repeal, and no right to a refund of tax that accrued prior to the effective date on which a levy is discontinued may be denied as a result of the repeal.

Requested by: Representatives Payne, Fussell, Barnes, Senators Ward, Warren

-----PUPIL TRANSPORTATION PROGRAM IMPROVEMENTS

Sec. 38. The Department of Public Instruction shall implement the Pupil Transportation Program Improvements Implementation Projects authorized by Section 55 of Chapter 752 of the 1989 Session Laws. The Department of Public Instruction may use up to \$400,000 of the funds appropriated for the 1991-92 fiscal year for aid to local school administrative units for pupil transportation in order to replace computer equipment located in the 100 county school bus garages and in the Department of Public Instruction, as required by the State Fleet Vehicle Management System, and for other purposes required for the implementation of the projects authorized by the 1989 Session.

The Department shall report to the Joint Legislative Commission on Governmental Operations in March of 1992 on the implementation of the projects specified in this section.

Requested by: Representatives Fussell, Payne, Barnes, Diamont, Nesbitt, Senators Ward, Warren

-----APPROPRIATION OF FUNDS FROM STATE LITERARY FUND

Sec. 39. There is appropriated from the State Literary Fund to the Department of Public Education the sum of \$2,500,000 for the 1991-92 fiscal year for aid to local school administrative units.

Requested by: Representatives Fussell, Payne, Barnes, Senators Ward, Warren

-----ALLOCATION OF FUNDS FOR MERGED CAREER LADDER PILOT PROJECTS

Sec. 39.1. Any career ladder pilot project in a school unit that has resulted from a merger of school units subsequent to July 1, 1991, may be modified by the local school board, upon the

recommendation of the State Superintendent of Public Instruction and with the approval of the State Board of Education. For the fiscal year of the merger through the 1993-94 fiscal year, the merged unit shall receive (i) the amount of funds that was previously allocated to the particular pilot project by the State Board of Education and (ii) the amount of funds it is entitled to receive to administer the School Accountability Act of 1989 pursuant to this act, for the portion of the merged unit that did not participate in the pilot project.

Requested by: Representatives Fussell, Payne, Barnes, Senators Ward, Warren

-----REMOVE LIMITATION ON UNIFORM EDUCATION REPORTING SYSTEM FINES

Sec. 39.2. G.S. 115C-438 reads as rewritten:

" § 115C-438. *Provision for disbursement of State money.*

The deposit of money in the State treasury to the credit of local school administrative units shall be made in monthly installments, and additionally as necessary, at such time and in such a manner as may be most convenient for the operation of the public school system. Before an installment is credited, the school finance officer shall certify to the State Board of Education the expenditures to be made by the local school administrative unit from the State Public School Fund during the month. This certification shall be filed on or before the fifth day following the end of the month preceding the period in which the expenditures will be made. The State Board of Education shall determine whether the moneys requisitioned are due the local school administrative unit, and upon determining the amount due, shall cause the requisite amount to be credited to the local school administrative unit. Upon receiving notice from the State Treasurer of the amount placed to the credit of the local school administrative unit, the finance officer may issue State warrants up to the amount so certified.

The State Board of Education may withhold money for payment of salaries for administrative officers of local school administrative units if any report required to be filed with State school authorities is more than 30 days overdue. The State Board of Education shall withhold money for payment of salaries for the superintendent, finance officer, and all other administrative officers charged with providing payroll information pursuant to G.S. 115C-12(18), if the local school administrative unit fails to provide the payroll information to the State Board in a timely fashion and substantially in accordance with the standards set by the State Board; ~~provided, however, the maximum amount withheld from any local school administrative unit shall be twenty-five thousand dollars (\$25,000).~~ Board.

Money in the State Public School Fund and State bond moneys shall be released only on warrants drawn on the State Treasurer, signed by such local official as may be required by the State Board of Education."

Requested by: Representatives Fussell, Payne, Barnes, Senators Ward, Warren

-----PAYMENT OF TEACHERS IN YEAR-ROUND SCHOOLS

Sec. 39.3. (a) G.S. 115C-302(a) reads as rewritten:

"(a) Teachers shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All teachers employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as state-allotted teachers are paid.

Teachers paid State funds shall be paid as follows:

- (1) Academic Teachers. -- Regular state-allotted teachers shall be employed for a period of 10 calendar months. Salary payments to regular state-allotted teachers shall be made monthly at the end of each calendar month of service: Provided, that teachers employed for a period of 10 calendar months in year-round schools shall be paid in 12 equal installments: ~~Provided,~~ Provided further, that any individual teacher who is not employed in a year-round school may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. Such request shall be filed in the local school administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said local school administrative unit; nor shall such payment apply to any teacher who is employed for a period of less than 10 months. Included within the 10 calendar months employment shall be annual vacation leave at the same rate provided for State employees, computed at one twelfth (1/12) of the annual rate for State employees for each calendar month of employment; which shall be provided by each local board of education at a time when students are not scheduled to be in regular attendance. Included within the 10 calendar months employment each local board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment for academic teachers as those designated by the State Personnel Commission for State employees; on a day that employees are required to report

for a workday but pupils are not required to attend school due to inclement weather, a teacher may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Within policy adopted by the State Board of Education, each local board of education shall develop rules and regulations designating what additional portion of the 10 calendar months not devoted to classroom teaching, holidays, or annual leave shall apply to service rendered before the opening of the school term, during the school term, and after the school term and to fix and regulate the duties of state-allotted teachers during said period, but in no event shall the total number of workdays exceed 200 days. Local boards of education shall consult with the employed public school personnel in the development of the 10-calendar-months schedule.

- (2) Occupational Education Teachers. -- State-allotted months of employment to local boards of education as provided by the State Board of Education shall be used for the employment of teachers of occupational education for a term of employment as determined by the local boards of education. Salary payments to these occupational education teachers shall be made monthly at the end of each calendar month of service: Provided, that local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 1982-83 school year for any school year thereafter: Provided further, that teachers employed for a term of 10 calendar months in year-round schools shall be paid in 12 equal installments: Provided, Provided further, that any individual teacher employed for a term of 10 calendar months who is not employed in a year-round school may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit. Included within their term of employment shall be the same rate of annual vacation leave and legal holidays provided under the same conditions as set out in subdivision (1) above, but in no event shall the total workdays for a 10-month employee exceed 200 days in a

10-month schedule and the workweek shall constitute five days for all occupational teachers regardless of the employment period.

Occupational education teachers who are employed for 11 or 12 months may, with prior approval of the principal, work on annual leave days designated in the school calendar and take those annual leave days during the 11th or 12th month of employment.

No deductions shall be made from salaries of teachers of vocational agriculture and home economics whose salaries are paid in part from State and federal vocational funds while in attendance upon community, county and State meetings called for the specific purpose of promoting the agricultural interests of North Carolina, when such attendance is approved by the superintendent of the administrative unit and the State Director of Vocational Education.

- (3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. The first 10 days of annual vacation leave earned by a teacher during any fiscal year period shall be scheduled to be used in the school calendar adopted by the respective local boards of education. Vacation days shall not be used for extending the term of employment of individuals. Teachers may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any teachers with more than 30 days of accumulated leave shall have the excess accumulation cancelled so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by the teacher will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of

Education shall adopt rules and regulations for the administration of this subdivision.

- (4) Each local board of education shall sustain any loss by reason of an overpayment to any teacher paid from State funds.
- (5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars (\$50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.
- (6) The State Board of Education, in fixing the State standard salary schedule of teachers as authorized by law, shall provide that teachers who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals and superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States."

(b) G.S. 115C-316(a) reads as rewritten:

"(a) School officials and other employees shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All school officials and other employees employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as state-allotted school officials and other employees are paid.

Public school employees paid from State funds shall be paid as follows:

- (1) Employees Other than Superintendents, Supervisors and Classified Principals on an Annual Basis. -- Salary payments to employees other than superintendents, supervisors, and classified principals employed on an annual basis shall be made monthly at the end of each calendar month of service. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for state employees for each calendar month of employment. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement

weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Included within their term of employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.

- (2) School Employees Paid on an Hourly or Other Basis. -- Salary payments to employees other than those covered in G.S. 115C-272(b)(1), 115C-285(a)(1) and (2), 115C-302(a)(1) and (2), and 115C-316(a)(1) shall be made at a time determined by each local board of education. Expenditures for the salary of these employees from State funds shall be within allocations made by the State Board of Education and in accordance with rules and regulations approved by the State Board of Education concerning allocations of State funds: Provided, that school employees employed for a term of 10 calendar months in year-round schools shall be paid in 12 equal installments: Provided, Provided further, that any individual school employee employed for a term of 10 calendar months who is not employed in a year-round school may be paid in 12 monthly installments if the employee so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the employee. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract between the employee and the said administrative unit. Included within the term of employment shall be provided for full-time employees annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for State employees for each calendar month of employment, to be taken under policies determined by each local board of education. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Included within their term of employment, each local board of education shall designate the same or an equivalent number of legal holidays occurring within the

- period of employment as those designated by the State Personnel Commission for State employees.
- (3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. The first 10 days of annual leave earned by a 10- or 11-month employee during any fiscal year period shall be scheduled to be used in the school calendar adopted by the respective local boards of education. Vacation days shall not be used for extending the term of employment of individuals. Ten- or 11-month employees may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any of these employees with more than 30 days of accumulated leave shall have the excess accumulation cancelled so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by these employees will be upon the authorization of their immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.
- (4) Twelve-month school employees other than superintendents, supervisors and classified principals paid on an hourly or other basis whether paid from State or from local funds may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any employee with more than 30 days of accumulated leave shall have the excess accumulation cancelled so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by the employee will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid

in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

- (5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars (\$50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.
- (6) Each local board of education shall sustain any loss by reason of an overpayment to any school official or other employee paid from State funds.")

PART 15.-----COMMUNITY COLLEGES

Requested by: Representatives Payne, Fussell, Senator Ward

-----MAINTENANCE OF PLANT

Sec. 40. (a) Notwithstanding any provision of law to the contrary, any community college that has an out-of-county student head count served on the main campus of the college in excess of fifty percent (50%) of the total student head count as defined by the State Board of Community Colleges shall be provided funds for the purpose of "operations of plant". These funds shall not exceed eighty-five percent (85%) of the funds allocated to these colleges during the 1990-91 fiscal year for this purpose.

(b) This section becomes effective July 1, 1992.

Requested by: Representatives Payne, Fussell, Senator Ward

-----BUDGET FLEXIBILITY

Sec. 41. The State Board of Community Colleges shall establish budget guidelines that grant to the individual institutions maximum budget flexibility to accomplish the budget reductions assigned to them by the State Board for the 1991-93 fiscal biennium. These guidelines

shall allow transfers of all operating funds, except from literacy funds and the Human Resources Development Program, between line items and program areas. These guidelines shall also require that, to the extent possible, reductions shall be taken in administrative costs rather than from instructional costs.

The State Board is not required to make budget reduction allocations on a pro rata basis and may specify various programs for reduction.

The State Board shall require each college to submit a plan assuring a balanced educational program that meets statewide priorities.

The State Board shall report to the Regular 1992 Session of the 1991 General Assembly on these guidelines and on the implementation of these guidelines by each institution.

Requested by: Representatives Payne, Fussell, Senator Ward
 -----OPERATING APPROPRIATIONS/NOT USED FOR
 RECREATION EXTENSION

Sec. 42. Funds appropriated in the 1991-93 fiscal biennium to the Department of Community Colleges as operating expenses for allocation to the institutions comprising the Community College System shall not be used to support recreation extension courses. The financing of these courses by any institution shall be on a self-supporting basis, and membership hours produced from these activities shall not be counted when computing full-time equivalent students for use in budget-funding formulas at the State level.

Requested by: Representatives Payne, Fussell, Senator Ward
 -----FULL-TIME EQUIVALENT TEACHING
 POSITIONS/COMMUNITY COLLEGES

Sec. 43. For the purpose of determining the community college system-wide number of full-time equivalent (FTE) teaching positions each year, the total curriculum full-time equivalent student enrollment shall be divided by the appropriate number for each year of the 1991-93 fiscal biennium pursuant to funds appropriated in this act for this purpose. The occupational extension full-time equivalent student enrollment shall be divided by 23 for the 1991-92 fiscal year and by 23 for the 1992-93 fiscal year.

Requested by: Representatives Payne, Fussell, Senator Ward
 -----TUITION/PUBLIC SCHOOL STUDENTS TAKING
 COMMUNITY COLLEGE COURSES

Sec. 44. G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department of Correction's Division of Adult Probation and Parole and employees of the Division of Youth Services of the Department of Human Resources required to be certified pursuant to Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Human Resources Development Programs, juveniles of any age committed to the Division of Youth Services of the Department of Human Resources by a court of competent jurisdiction, and prison inmates. Provided further, tuition shall be waived for senior citizens attending institutions operating pursuant to this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges in accordance with G.S. 115D-20(4) and this section."

Requested by: Representatives Payne, Fussell, Senator Ward
-----BOOKS AND EQUIPMENT APPROPRIATIONS/REVERT
AFTER ONE YEAR

Sec. 45. Appropriations to the Department of Community Colleges for equipment and library books are made for each year of

the fiscal biennium. All unencumbered appropriations shall revert to the General Fund 12 months after the close of each fiscal year for which they were appropriated. Encumbered balances outstanding at the end of each period shall be handled in accordance with existing State Budget policies. The Department shall be able to identify to the Office of State Budget and Management which appropriations will revert at the end of the 12 months after the close of each fiscal year.

Requested by: Representatives Payne, Fussell, Senator Ward

-----"TECH PREP" IMPLEMENTATION

Sec. 46. Of the funds available to the Department of Public Education for vocational education, \$50,000 for the 1991-92 fiscal year and \$50,000 for the 1992-93 fiscal year, shall be allocated to the North Carolina Tech Prep Leadership Development Center at Richmond Community College for assistance to local education agencies and community colleges in planning and implementing "Tech Prep" across the State. The Department of Community Colleges shall allocate \$50,000 each year from funds available to it for the 1991-92 fiscal year and for the 1992-93 fiscal year for the North Carolina "Tech Prep" Leadership Development Center at Richmond Community College.

Requested by: Representatives Payne, Fussell, Senator Ward

-----ASSISTANCE TO HOSPITAL NURSING/FUND DISTRIBUTION

Sec. 47. (a) Funds appropriated in this Title to the Department of Community Colleges to provide financial assistance to hospital programs of nursing education leading to diplomas in nursing that are fully accredited by the North Carolina Board of Nursing and operated under the authority of a public or nonprofit hospital licensed by the North Carolina Medical Care Commission shall be distributed, upon application for financial assistance, for each full-time student duly enrolled in the program as of December 1, 1990, and on condition that accreditation is maintained. The amount per student shall not exceed \$850. The State Board of Community Colleges shall adopt rules to ensure that this financial assistance is used directly for faculty and instructional needs of diploma nursing programs.

(b) This section expires June 30, 1992.

Requested by: Representative Nesbitt

-----STATE DEFENSE MILITIA EXEMPT FROM COMMUNITY COLLEGE TUITION AND FEES

Sec. 48. G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Adult Probation and Parole and employees of the Division of Youth Services of the Department of Human Resources required to be certified pursuant to Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Human Resources Development Programs, juveniles of any age committed to the Division of Youth Services of the Department of Human Resources by a court of competent jurisdiction, ~~and prison inmates,~~ prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered pursuant to Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating pursuant to this Chapter as set forth in Chapter 115B of the General Statutes. Tuition Waiver for Senior Citizens."

PART 16.-----COLLEGES AND UNIVERSITIES

Requested by: Representatives Payne, Fussell, Senator Ward
-----TEACHING HOSPITAL REIMBURSEMENT

Sec. 49. Reimbursement to Pitt County Memorial Hospital for uncompensated care provided to non-Pitt County residents admitted by East Carolina Medical School faculty shall be limited to the unreimbursed portion of actual costs as determined in the Medicare Cost Report.

Requested by: Representatives Payne, Fussell, Senator Ward

-----AID TO PRIVATE COLLEGES/LEGISLATIVE TUITION
GRANT LIMITATIONS

Sec. 50. (a) The amount of a tuition grant awarded to a student enrolled in a degree program at a site away from the main campus of the approved private institution, as defined in G.S. 116-22(1), may be no more than the result of the ratio of the cost per credit hour for off-campus instruction at that site to the cost per credit hour for regular, full-time on-campus instruction, multiplied by the maximum grant award, or the maximum grant award allowable under Section 51(b) of this Title, whichever is less.

(b) No Legislative Tuition Grant funds may be expended for a program at an off-campus site of a private institution, as defined in G.S. 116-22(1), established after May 15, 1987, unless (i) the private institution offering the program has previously notified and secured agreement from other private institutions operating degree programs in the county in which the off-campus program is located or operating in the counties adjacent to that county or (ii) the degree program is neither available nor planned in the county with the off-campus site or in the counties adjacent to that county.

An "off-campus program" is any program offered for degree credit away from the institution's main, permanent campus.

(c) Any member of the armed services as defined in G.S. 116-143.3(a), abiding in this State incident to active military duty, who does not qualify as a resident for tuition purposes as defined under G.S. 116-143.1, is eligible for a Legislative Tuition Grant pursuant to this section if the member is enrolled as a full-time student. The member's Legislative Tuition Grant may not exceed the cost of tuition less any tuition assistance paid by the member's employer.

Requested by: Representatives Payne, Fussell, Senator Ward

-----AID TO PRIVATE COLLEGES/PROCEDURE

Sec. 51. (a) Funds appropriated in this Title to the Board of Governors of The University of North Carolina for aid to private colleges shall be disbursed in accordance with the provisions of G.S. 116-19, 116-21, and 116-22. These funds shall provide up to \$450.00 per full-time equivalent North Carolina undergraduate student enrolled at a private institution as of October 1 each year.

These funds shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in this account shall be provided as scholarship funds for needy North Carolina students during the fiscal year. Each student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be made available for the tuition grant program as defined in subsection (b) of this section.

(b) In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to private educational institutions located within the State, or to students attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, not to exceed \$1.150 per academic year, which shall be distributed to the student as hereinafter provided.

The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority may not approve any grant until it receives proper certification from an approved institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit at such times as it shall prescribe the grant to the approved institution on behalf, and to the credit, of the student.

In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of October 1 of the first academic term or on the tenth classroom day following the beginning of the second school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and credited grants paid on the behalf of the students.

In the event there are not sufficient funds to provide each eligible student with a full grant:

- (1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a) and (b) of this section; and

- (2) Each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

Any remaining funds shall revert to the General Fund.

(c) Expenditures made pursuant to this section may be used only for secular educational purposes at nonprofit institutions of higher learning.

Requested by: Representatives Payne, Fussell, Senator Ward

-----WAKE FOREST AND DUKE MEDICAL SCHOOL
ASSISTANCE/FUNDING FORMULAE

Sec. 52. Funds appropriated in this Title to the Board of Governors of The University of North Carolina for continuation of financial assistance to the medical schools of Duke University and Wake Forest University shall be disbursed on certifications of the respective schools of medicine that show the number of North Carolina residents as first-year, second-year, third-year, and fourth-year students in the medical school as of November 1, 1991, and November 1, 1992. Disbursement to Wake Forest University shall be made in the amount of \$8,000 for each medical student who is a North Carolina resident, \$1,000 of which shall be placed by the school in a fund to be used to provide financial aid to needy North Carolina students who are enrolled in the medical school. The maximum aid given to any student from this fund in a given year may not exceed the amount of the difference in tuition and academic fees charged by the school and those charged at the School of Medicine at the University of North Carolina at Chapel Hill.

Disbursement to Duke University shall be made in the amount of \$5,000 for each medical student who is a North Carolina resident, \$500.00 of which shall be placed by the school in a fund to be used to provide student financial aid to financially needy North Carolina students who are enrolled in the medical school. No individual student may be awarded assistance from this fund in excess of \$2,000 each year. In addition to this basic disbursement for each year of the biennium, a disbursement of \$1,000 shall be made for each medical student who is a North Carolina resident in the first-year, second-year, third-year, and fourth-year classes to the extent that enrollment of each of those classes exceeds 30 North Carolina students.

The Board of Governors shall establish the criteria for determining the eligibility for financial aid of needy North Carolina students who are enrolled in the medical schools and shall review the grants or awards to eligible students. The Board of Governors shall adopt rules for determining which students are residents of North Carolina for the purposes of these programs. The Board of Governors

shall also make any regulations as necessary to ensure that these funds are used directly for instruction in the medical programs of the schools and not for religious or other nonpublic purposes. The Board of Governors shall encourage the two schools to orient students towards personal health care in North Carolina giving special emphasis to family and community medicine.

Requested by: Representatives Payne, Fussell

-----UNC BUDGETARY CHANGES

Sec. 54. The Board of Governors of The University of North Carolina shall make the following change in all future budget presentations to the General Assembly and in the 1991-93 budget certification to the constituent institutions of The University of North Carolina:

The existing budget purposes or programs of State Administration, State-Subject Matter, State Information, County Supervision, and County Program Operation with the North Carolina Agricultural Extension Service budget code shall be consolidated into the budget purposes or programs entitled State Administration, State Program Operations, and County Program Operations.

Requested by: Representatives Payne, Fussell

-----UNC BOARD OF GOVERNORS/STATE BOARD OF
COMMUNITY COLLEGES SMALL BUSINESS MEMORANDUM
OF AGREEMENT

Sec. 55. The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall develop and implement a new Memorandum of Agreement between the Small Business and Technology Development Centers Program (SBTDC) in The University of North Carolina and the Small Business Assistance Centers in the Community Colleges system. This Memorandum of Agreement shall:

- (1) Refine existing agreements to increase coordination of services, to provide for referral and client tracking between the systems, and to define the types of service to be provided by each entity;
- (2) Provide for subcontractors when necessary or reasonable for the provision of services, including the use of federal funds to provide services;
- (3) Require definitive working agreements at the local level in those counties or municipal areas where more than one State-funded entity provides services to small businesses. These defined working agreements shall include:

- a. Efforts to consolidate office space and support services where feasible;
- b. Referral and client tracking systems; and
- c. Coordination of program and service delivery efforts; and
- (4) Provide for joint annual reports on these efforts.

The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall approve the Memorandum of Agreement and report the results of their efforts and the impact of the working agreements on operations and cost to the Joint Legislative Commission on Governmental Operations and to the General Assembly by March 31, 1992.

Requested by: Representatives Payne, Fussell

-----UNC BOARD OF GOVERNORS PREVENTION OF
DUPLICATIVE ECONOMIC DEVELOPMENT EFFORTS

Sec. 56. The Board of Governors of The University of North Carolina shall address the issue of duplicative economic development efforts within The University of North Carolina. To achieve this, the Board shall:

- (1) Reallocate the funds for Northeastern North Carolina Tomorrow (E.C.S.U.), Western North Carolina Tomorrow (W.C.U.), the Regional Development Institute (ECU), The Economic Development Office (PSU), and the Urban Development Institute (UNC-C), pulled out of the individual campuses and provided to the Board in this act, after the funding reduction required by this act, to achieve consolidation of services and after:
 - a. Ensuring that the efforts of these offices are consistent with the Small Business and Technology Development Centers Program (SBTDC) efforts and may be used to match federal funds, including additional federal funds that may become available. The Board shall, when practical, consolidate these offices into the SBTDC network while ensuring that regional development services not provided by the SBTDC network are available to each region. The Board shall make every effort to maximize the use of any additional federal funds to lessen the impact of State budget reductions in these programs; and
 - b. Requiring the Small Business and Technology Development Centers Program (SBTDC) to provide those direct services to small businesses previously offered by the Department of Economic and Community

Development, including purchaser/supplier conferences and the small business clearinghouse.

The Board shall report the results of its consolidation and coordination of economic development activities including the allocation of funds, to the General Assembly and the House and Senate Appropriations Subcommittees on Education by March 31, 1992.

Requested by: Representative Nesbitt

-----OBSTETRICAL EDUCATION FUNDS

Sec. 57. Funds in the amount of \$480,000 appropriated to the Division of Maternal and Child Health, Department of Environment, Health, and Natural Resources in this Title for the Obstetrical Education Program of the Mountain Area Health Education Center (MAHEC) are hereby transferred to the Area Health Education Centers budget of the Board of Governors of The University of North Carolina. The funds transferred by this section shall be used for the MAHEC Obstetrical Education Program.

Requested by: Senators Ward, Conder

-----COMMUNITY SERVICES REDUCTIONS
LIMITATION/INSTITUTE OF GOVERNMENT PROGRAMS

Sec. 57.1. None of the reductions made by this act in the community services budgets of The University of North Carolina shall be taken in the programs of the Institute of Government at Chapel Hill.

Requested by: Representative Hackney, Senator Basnight

-----CHINQUA-PENN PLANTATION PLAN

Sec. 57.2. The Board of Governors of the University of North Carolina, in conjunction with the Department of Cultural resources, shall prepare a plan for the future use and management or disposition of Chinqua-Penn Plantation. The board shall present this plan to the 1991 General Assembly by April 15, 1992. For the 1991-92 fiscal year, North Carolina State University at Raleigh may make agreements with local governments, private entities, or other agencies for the operation of Chinqua-Penn Plantation. Funds appropriated to North Carolina State University at Raleigh in the amount of \$60,000 may be used in conjunction with such an agreement.

PART 17.-----DEPARTMENT OF TRANSPORTATION

Requested by: Representatives Anderson, McLaughlin, Holt, Senator Goldston

-----MOWING ROAD SHOULDERS

Sec. 58. The Board of Transportation shall review its policy of requiring private contractors to mow the State highway system. The Board shall look at the comparative costs between mowing with State forces versus private contractors. The Board shall explore the costs of returning mowing work, especially of secondary roads, to the 14 Highway Divisions. This study shall also consider the savings derived from reducing the width of the shoulder to be mowed. A report of the Board's findings shall be submitted to the House Appropriations Subcommittee on Transportation, to the Senate Appropriations Committee on Natural and Economic Resources, and to the Fiscal Research Division 30 days prior to the scheduled convening date of the 1992 Session of the General Assembly. Until a report is made to the 1992 Session, the Board of Transportation shall award mowing contracts of no more than one year in duration.

Requested by: Representatives McLaughlin, Holt, Senator Goldston

-----DOT PERSONNEL ACTIONS REPORTED

Sec. 59. The Department of Transportation shall submit a list of personnel actions every six months to the Joint Legislative Highway Oversight Committee and to the Fiscal Research Division. This list shall include positions reallocated, reclassified, abolished, and created. The report shall give the status of the Department's salary reserves and how they were used during the reporting period.

Requested by: Representatives McLaughlin, Holt, Senator Goldston

-----PLAN TO REDUCE LABOR VARIANCE

Sec. 60. The Department of Transportation shall submit to the House Appropriations Subcommittee on Transportation and the Senate Appropriations Committee on Natural and Economic Resources during the 1992 Session of the General Assembly, a plan to reduce labor variance in highway planning and design from the current nineteen and two-tenths percent (19.2%) to the pre-Trust Fund 1985 level of ten and six-tenths percent (10.6%). The Plan shall list all activities that are charged to labor variance and the reasons why the work has not been assigned to job orders.

Requested by: Representatives McLaughlin, Holt, Senator Goldston

-----PERFORMANCE AUDIT COMPARING COST OF ENGINEERING SERVICES BETWEEN DEPARTMENT OF TRANSPORTATION AND PRIVATE ENGINEERING FIRMS

Sec. 61. The State Auditor shall conduct a performance audit comparing the cost, quality, and timeliness of engineering services provided by outside consultants versus Department of Transportation

personnel. This audit shall include an analysis of overhead costs, labor variance, the impact of newly hired employees or Department of Transportation efficiency and the cost of supervising consultants. The State Auditor shall report his findings, by April 1, 1992, to the Chairmen of the Senate and House Appropriations Committees, the Chairmen of the House Appropriations Subcommittee on Transportation, and the Chairman of the Senate Appropriations Committee on Natural and Economic resources.

Requested by: Representatives McLaughlin, Holt, Senator Goldston
-----REDUCTION OF HIGHWAY TRUST FUND REVENUE USED
FOR ADMINISTRATIVE EXPENSES

Sec. 62. G.S. 136-176(b) reads as rewritten:

"(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed ~~five percent (5%)~~ four and one-half percent (4.5%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section, may be used each fiscal year by the Department for expenses to administer the Trust Fund. The rest of the funds in the Trust Fund shall be allocated and used as follows:

- (1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct the projects of the Intrastate System described in G.S. 136-179.
- (2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-180.
- (3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.
- (4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182."

Requested by: Representatives McLaughlin, Holt, Senator Goldston
-----BRANCH AGENT TRANSACTION RATE

Sec. 63. The Division of Motor Vehicles of the Department of Transportation shall compensate a contractor with whom it has a contract under G.S. 20-63(h) at the rate of ninety-two cents (92¢) for each transaction performed in accordance with the requirements set by the Division. A transaction is any of the following activities:

- (1) Issuance of a registration plate, a registration card, a registration renewal sticker, or a certificate of title.
- (2) Issuance of a handicapped placard or handicapped identification card.

- (3) Acceptance of an application for a personalized registration plate.
- (4) Acceptance of a surrendered registration plate, registration card, or registration renewal sticker, or acceptance of an affidavit stating why a person cannot surrender a registration plate, registration card, or registration renewal sticker.
- (5) Cancellation of a title because the vehicle has been junked.
- (6) Acceptance of an application for, or issuance of, a refund for a fee or a tax, other than the highway use tax.
- (7) Receipt of the civil penalty imposed by G.S. 20-309 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.
- (8) Acceptance of a notice of failure to maintain financial responsibility for a motor vehicle.
- (9) Collection of the highway use tax.

Performance at the same time of any combination of the items that are listed within each subdivision or are listed within subdivisions (1) through (8) is a single transaction. Performance of the item listed in subdivision (9) in combination with any other items listed in this section is a separate transaction.

Requested by: Representatives McLaughlin, Holt, Senator Goldston
 -----BIDS FOR COMPUTER SERVICES

Sec. 64. In requests for bids, requests for quotes, requests for proposals, or other procurement actions issued through the Department of Administration, Division of Purchase and Contract, or through any other State agency, for vendors to develop a strategic plan, conduct a feasibility study, or prepare a needs assessment for a computer system, information system, data communications network, data processing application, or other information technology application, there shall be a provision that reads as follows:

"Eligibility for Future Requirements: The successful offeror on this project will not be considered for an award on subsequent hardware, software, software support, and related procurements which are based on specifications or recommendations resulting from this procurement."

The Division of Purchase and Contract and the State agency or agencies involved in the procurement may delete this provision in a procurement request by jointly (i) filing a written request with the Director of the Budget for authorization to delete this provision from the procurement effort, (ii) sending a copy of this written request for authorization to the Director of the Fiscal Research Division at the time it is filed with the Office of State Budget, (iii) receiving written authorization to delete the provision from the Director of the Budget.

and (iv) reporting the authorization, if it is granted, to the Director of the Fiscal Research Division and to the next meeting of the Joint Legislative Commission on Governmental Operations.

Requested by: Representatives McLaughlin, Holt, Bowie, Senator Goldston

-----NORTH CAROLINA RAILROAD DIVIDENDS
APPROPRIATED TO THE HIGHWAY FUND FOR RAILROAD
PURPOSES

Sec. 65. G.S. 136-16.6 reads as rewritten:

"§ 136-16.6. *Continuing rail appropriations.*

~~There is annually appropriated, beginning with the 1987-88 fiscal year, from the General Fund to the Department of Transportation for rail purposes the greater of one hundred thousand dollars (\$100,000) or appropriated one hundred percent (100%) of the annual dividends received in the prior fiscal year (less any amounts that are required by Section 13.18 of Chapter 792, Session Laws of 1985 to be paid for the expenses of the Railroad Negotiating Commission) by the State from its ownership of stock in the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company, Company to the Highway Fund for use by the Department of Transportation for railroad purposes."~~

Requested by: Representatives McLaughlin, Holt, Senator Goldston

-----TRANSFER OF FUNDS FROM THE EQUIPMENT FUND

Sec. 66. The Department of Transportation's Equipment Fund shall pay to the Highway Fund \$5,000,000 for the 1991-92 fiscal year and \$5,000,000 for the 1992-93 fiscal year. These funds shall be used for highway maintenance.

Requested by: Representatives McLaughlin, Holt, Senator Goldston

-----HIGHWAY FUND ALLOCATIONS BY CONTROLLER

Sec. 66.1. The Controller of the Department of Transportation shall allocate at the beginning of each fiscal year from the various appropriations made to the Department of Transportation in this act, Titles:

State Construction

State Funds to Match Federal Highway Aid

State Maintenance

Ferry Operations,

sufficient funds to eliminate all overdrafts on State maintenance and construction projects, and these allocations may not be diverted to other purposes.

Requested by: Representatives McLaughlin, Holt, Senator Goldston
 -----CASH FLOW HIGHWAY FUND AND HIGHWAY TRUST
 FUND APPROPRIATIONS

Sec. 66.2. The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

For Fiscal Year 1993-94 \$971,000,000

For Fiscal Year 1994-95 \$990,000,000.

Sec. 66.3. The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

For Fiscal Year 1993-94 \$394,900,000

For Fiscal Year 1994-95 \$402,800,000.

Requested by: Representatives McLaughlin, Holt, Senator Goldston
 -----HIGHWAY FUND LIMITATIONS ON OVEREXPENDITURES

Sec. 66.4. (a) Overexpenditures from Section 4 of this act may be made by authorization of the Director of the Budget, Titles:

State Construction Primary Construction

State Construction Urban Construction

State Construction Access and Public Service Roads

State Funds to Match Federal Highway Aid

State Maintenance

Ferry Operations,

provided that there are corresponding underexpenditures from these same Titles. Overexpenditures or underexpenditures in any Titles may not vary by more than ten percent (10%) without prior consultation with the Advisory Budget Commission. Written reports covering overexpenditures or underexpenditures of more than ten percent (10%) shall be made to the Joint Legislative Highway Oversight Committee. The reports shall be delivered to the Director of the Fiscal Research Division not less than 96 hours prior to the beginning of the Committee's full meeting.

(b) Overexpenditures from Section 4 of this act, Titles:

State Construction Primary Construction

State Construction Urban Construction

State Construction Access and Public Service Roads

State Funds to Match Federal Highway Aid

State Maintenance

Ferry Operations,

for the purpose of providing additional positions shall be approved by the Director of the Budget and shall be reported on a quarterly basis to the Joint Legislative Highway Oversight Committee and to the Fiscal Research Division.

Requested by: Representatives McLaughlin, Holt, Senator Goldston
 -----RESURFACED ROADS MAY BE WIDENED

Sec. 66.5. Of the contract maintenance resurfacing program funds appropriated in this act to the Department of Transportation, an amount not to exceed fifteen percent (15%) of the Board of Transportation's allocation of these funds may be used for widening existing narrow pavements that are scheduled for resurfacing. The Department of Transportation shall report on the use of these funds to the Joint Legislative Highway Oversight Committee and the Fiscal Research Division by May 15, 1992.

Requested by: Representatives McLaughlin, Holt, Senator Goldston
 -----SMALL URBAN CONSTRUCTION PROGRAM FUNDS

Sec. 66.6. Of the funds appropriated in this Title to the Department of Transportation, \$10,805,664 shall be allocated in the 1991-92 fiscal year and \$10,028,266 in the 1992-93 fiscal year for small urban construction projects. \$7,000,000 of these funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for the small Urban Construction program for small urban construction projects that are located within the area covered by a one-mile radius of the municipal corporate limits. Of the remaining funds, \$3,805,664 for the 1991-92 fiscal year and \$3,028,266 for the 1992-93 fiscal year shall be used statewide for rural or small urban highway improvements as approved by the Secretary of the Department of Transportation.

None of these funds used for rural secondary road construction are subject to the county allocation formula as provided in G.S. 136-44.5.

The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to the Board of Transportation's action. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Highway Oversight Committee and the Fiscal Research Division.

Requested by: Representatives McLaughlin, Holt, Senator Goldston
 -----HIGHWAY FUND ADJUSTMENTS TO REFLECT ACTUAL REVENUE

Sec. 66.7. Any unreserved credit balance in the Highway Fund on June 30 of each of the fiscal years of this biennium shall support appropriations in the succeeding fiscal year. If all of the balance is not needed for these appropriations, the Director of the Budget may use the remaining excess to establish a reserve for access and public roads, a reserve for unforeseen happening of a state of affairs

requiring prompt action as provided by G.S. 136-44.1, and other required reserves. Actual revenue in excess of estimated revenue shall be placed in the reserve for highway maintenance. If all of the remaining excess is not used to establish these reserves, the remainder shall be allocated to the State-funded maintenance appropriations in the manner approved by the Board of Transportation. The Board of Transportation shall report monthly to the Joint Legislative Highway Oversight Committee and the Fiscal Research Division about the use of the reserve for highway maintenance.

Requested by: Senator Plyler

-----SIGNING OF STATE-MAINTAINED COUNTY ROADS

Sec. 66.8. \$500,000 of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1991-92 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the county road name-signing program in the 30 counties where signing has not already been funded.

PART 18.-----DEPARTMENT OF CORRECTION

Requested by: Representatives Anderson, Redwine, Senator Marvin

-----PRIVATE CONFINEMENT FACILITIES

Sec. 67. No for-profit, privately owned or operated confinement facilities may be added to the State prison system unless approved by the General Assembly. The State may contract with private, nonprofit firms to provide or operate work and study release centers for women and for youth.

Requested by: Representatives Anderson, Redwine, Senator Marvin

-----NEGOTIATED RATES FOR MEDICAL SERVICES

Sec. 68. The Department of Correction shall negotiate for rates as close to Medicaid rates as possible for all medical services rendered to that Department by providers who are not State employees. The Department shall report the results of its negotiations to the Chairmen of the Senate Appropriations Committee and the Senate Base Budget Appropriations Committee, the Chairmen of the House Appropriations Committee, and the Chairmen of the Senate and the House Appropriations Committees on Justice and Public Safety prior to March 15, 1992.

Requested by: Representatives Anderson, Redwine, Senator Marvin
-----LIMIT USE OF OPERATIONAL FUNDS

Sec. 69. Funds appropriated in this Title to the Department of Correction for operational costs for additional facilities shall be used for the personnel and operating expenses set forth in the budget approved by the General Assembly in this act. These funds may not be expended for any other purpose, and may not be expended for additional prison personnel positions until the new facilities are within 90 days of completion, except as authorized for the facilities at Nash, Pender, South Mountain, and Brown Creek.

Requested by: Representatives Anderson, Redwine
-----INMATE REPRESENTATION STUDY

Sec. 70. The Joint Legislative Commission on Governmental Operations shall study the issue of providing legal representation to inmates in the custody of the Department of Correction by examining the current means and alternative means of providing such representation and determining which of those means are the most feasible. The Commission shall report its findings and any recommendations to the Chairmen of the Senate and House Appropriations Committees and the Chairmen of the Senate and House Appropriations Committees on Justice and Public Safety by May 1, 1992.

PART 19.-----DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Requested by: Representatives Anderson, Redwine, Senator Marvin
-----REPORT ON COMMUNITY SERVICE WORKERS

Sec. 71. The Department of Crime Control and Public Safety shall report quarterly in the 1991-92 fiscal year and the 1992-93 fiscal year to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the number of community service workers who were available during each month of the time period preceding that report to perform repairs and maintenance of the parks and when and where they were available.

Requested by: Representatives Anderson, Redwine, Senator Marvin
-----REPORT ON THE CRIME VICTIMS COMPENSATION FUND

Sec. 72. The Department of Crime Control and Public Safety shall report annually to the Senate and House Appropriations Base Budget Committees on Justice and Public Safety and the Fiscal Research Division on the administrative expenditures of the North Carolina Crime Victims Compensation Fund.

Requested by: Representatives Anderson, Redwine, Senator Marvin
-----LEGISLATIVE REVIEW OF DRUG LAW ENFORCEMENT
AND OTHER GRANTS

Sec. 73. (a) Section 1303(4) of the Omnibus Crime Control and Safe Streets Act of 1968 provides that State applications for drug law enforcement grants are subject to review by the State legislature or its designated body.

(b) The North Carolina General Assembly hereby provides that State applications for grants under the State and Local Law Enforcement Assistance Act of 1986, Part M of the Omnibus Crime Control and Safe Streets Act of 1968 as enacted by Subtitle K of P.L. 99-570, the Anti-Drug Abuse Act of 1986, are subject to review by the Joint Legislative Commission on Governmental Operations if at the time of review the General Assembly is not in session.

(c) Unless a State statute provides a different forum for review where a federal law or regulation provides that a State application for a grant must be reviewed by the State legislature or its designated body and at the time of the review the General Assembly is not in session, that application shall be reviewed by the Joint Legislative Commission on Governmental Operations.

Requested by: Representatives Anderson, Redwine, Senator Marvin
-----REPORT ON MOTOR VEHICLE REPLACEMENT COST

Sec. 74. The Department of Crime Control and Public Safety shall report to the 1991 General Assembly, 1992 Regular Session, regarding the reduction in the number of motor vehicles replaced by the Highway Patrol for the 1991-92 fiscal year and the effect, if any, of that reduction on the Highway Patrol, and shall also review and report on the projected cost of replacing motor vehicles for the 1992-93 fiscal year. The Department of Justice shall report to the 1991 General Assembly, 1992 Regular Session, regarding the reduction in the number of motor vehicles replaced by the State Bureau of Investigation for the 1991-92 fiscal year and the effect, if any, of that reduction on the State Bureau of Investigation, and shall also review and report on the projected cost of replacing motor vehicles for the 1992-93 fiscal year.

Requested by: Representatives Anderson, Redwine, Senator Marvin
-----REPORT ON HIGHWAY PATROL FURNITURE AND
EQUIPMENT REPLACEMENT SCHEDULE

Sec. 75. The Highway Patrol, Department of Crime Control and Public Safety, shall report to the 1991 General Assembly, 1992 Regular Session, regarding the reductions in the replacement schedule for furniture and equipment for the Highway Patrol for the 1991-92

fiscal year and the effect, if any, of those reductions. The Highway Patrol shall also report on the projected cost of the replacement schedule for equipment and furniture for the 1992-93 fiscal year.

Requested by: Representatives Anderson, Redwine, Senators Marvin, Odom

-----CRIME VICTIMS COMPENSATION/SOFTWARE FUNDS

Sec. 76. (a) The Office of State Budget and Management shall designate \$10,080 of the Computer Reserve Fund created in the Office of State Budget and Management for the 1991-92 fiscal year for the critical computer needs of the Crime Victims Compensation Program in the Department of Crime Control and Public Safety.

(b) Effective January 1, 1992, the Department of Crime Control and Public Safety shall eliminate one position for a claims examiner and one position for an investigator.

PART 20.-----JUDICIAL DEPARTMENT

Requested by: Representatives Anderson, Redwine, Senator Marvin

-----COMMISSIONERS ON UNIFORM STATE LAWS

Sec. 77. From funds appropriated to the Judicial Department in the certified budget for the 1991-93 fiscal biennium in this Title, the Administrative Office of the Courts may transfer within its budget up to \$19,000 for the 1991-92 fiscal year and up to \$19,000 for the 1992-93 fiscal year to reimburse the expenses of travel of the North Carolina delegation of the National Conference of Commissioners on Uniform State Laws.

Requested by: Representatives Anderson, Redwine, Senator Marvin

-----INDIGENT PERSONS' ATTORNEY FEE FUND

Sec. 78. (a) Effective July 1, 1991, the Administrative Office of the Courts shall each year of the 1991-93 fiscal biennium place the sum of \$3,249,236 from the Indigent Persons' Attorney Fee Fund in a reserve for capital cases and for transcripts, professional examinations, and expert witness fees. The Administrative Office of the Courts shall allot these funds as needed for these purposes and for unanticipated demands on the fund.

(b) Effective July 1, 1991, the Administrative Office of the Courts shall, for each year of the biennium, allot the sum of \$11,500,000 from the Indigent Persons' Attorney Fee Fund for adult, juvenile, and guardian *ad litem* cases for the 1991-92 and 1992-93 fiscal years to each judicial district where the superior and district court districts are coterminous, and otherwise by county, according to the caseload of

indigent persons who were not represented by the public defender in the districts or counties during 1990-91 and 1991-92, respectively.

The Administrative Office of the Courts shall notify all senior resident superior court judges, all chief district court judges, and the clerk of superior court within the district or county immediately after the allotment is made and shall regularly notify them how much remains for the district or county.

The senior resident superior court judge and the chief district court judge of each district or county shall ask all judges holding court within the district or county: (i) to take into consideration the amount of money allotted at the beginning of the fiscal year and the amount of money remaining in the allotment when they award counsel fees to attorneys of indigent persons, and (ii) to make an effort to award fees equally and justly for legal services provided. The clerk of superior court for each county shall assure that all judges holding court within the county receive this request from the senior resident superior court judge and the chief district court judge.

(c) If the funds allotted pursuant to subsection (b) of this section are depleted in a district or county prior to the end of the fiscal year, the Administrative Office of the Courts shall allot the remaining funds from the Indigent Persons' Attorney Fee Fund in the same manner as provided in subsection (b) of this section, provided, however, if necessary and appropriate due to unusual and unanticipated circumstances occurring in the current year, the Administrative Office of the Courts may allocate funds to a district or county in a manner calculated to result in the reasonably fair distribution of the remaining funds. Such funds shall be subject to the limitations and directions set out in subsection (b) of this section.

(d) If the funds allotted pursuant to subsection (c) of this section are depleted in a district or county prior to the end of the fiscal year, the Administrative Office of the Courts is authorized to resume payments in such districts or counties only if and when it is reasonably determined that the total projected expenditures will be less than the total approved budget for the Indigent Persons' Attorney Fee Fund for the fiscal year.

Requested by: Representatives Anderson, Redwine, Senator Marvin
-----CURRENT OPERATING EXPENSES

Sec. 79. From funds appropriated to the Judicial Department in the certified budget for the 1991-92 fiscal year in this Title, the Administrative Office of the Courts may transfer within its budget up to \$2,500,000 to meet additional current operating expenses for supplies and materials, current obligations, fixed charges, other expenses, equipment and books, and indigent persons' attorney fees.

The Administrative Office of the Courts shall make quarterly reports on transfers made pursuant to this section to the Joint Legislative Commission on Governmental Operations and the Chairmen of the Senate and the House Appropriations Committees on Justice and Public Safety.

Requested by: Representatives Anderson, Redwine, Senator Marvin
 -----RAPE VICTIM WITNESS COUNSELLOR PROGRAM

Sec. 80. From funds appropriated to the Judicial Department in the certified budget for the 1991-93 biennium in this Title, the Administrative Office of the Courts may transfer within its budget up to \$25,000 for the 1991-92 fiscal year and up to \$25,000 for the 1992-93 fiscal year to support the existing Rape Victim Witness Counsellor Program.

Requested by: Representatives Anderson, Redwine, Senator Marvin
 -----ASSIGNED COUNSEL/PUBLIC DEFENDER COST
 COMPARISON REPORTS FOR DISTRICTS 4A, 5, AND 10;
 INTENT TO ESTABLISH PUBLIC DEFENDER OFFICES WHERE
 ASSIGNED COUNSEL COSTS EXCESSIVE

Sec. 81. (a) Before the 1992 Regular Session of the 1991 General Assembly convenes, the Administrative Office of the Courts shall submit to the House and Senate Appropriations Committees on Justice and Public Safety and to the Joint Legislative Commission on Governmental Operations two reports which compare the amount actually spent on private assigned counsel for indigent persons in Superior Court District or Set of Districts 4A (Sampson, Duplin, and Jones Counties), 5 (New Hanover and Pender Counties), and 10 (Wake County), with the estimated amount which would have been incurred had there been a public defender in each of those districts. The first report shall be submitted on or before January 1, 1992, and shall cover the period May 1, 1991, through October 31, 1991; the second report shall be submitted on or before May 20, 1992, and shall cover the period May 1, 1991, through April 30, 1992. Each report shall be based on methods and shall be presented in a format substantially similar to those of the "Comparative Cost Estimates for Establishing Additional Public Defender Offices in Certain Judicial Districts" which are prepared annually by the Administrative Office of the Courts.

(b) It is the intent of the General Assembly to establish, effective July 1, 1992, a public defender office for a defender district coterminous with any of the three superior court districts or set of districts designated in subsection (a) of this section in which the amount actually spent on private assigned counsel between May 1,

1991, and April 30, 1992, exceeds the estimated amount which would have been incurred in the same period had there been a public defender office in that district or set of districts, as shown in the reports submitted pursuant to subsection (a) of this section.

(c) By May 20, 1992, the Administrative Office of the Courts shall report to the entities designated to receive the reports in subsection (a) of this section on the cost effectiveness of the existing public defender offices.

Requested by: Representatives Anderson, Redwine, Senator Marvin

-----APPELLATE DEFENDER -- DEATH PENALTY CASES

Sec. 82. (a) Report on Appellate Defender's Office. The Judicial Department shall submit reports on March 15 of each year of the 1991-93 biennium to the House and Senate Appropriation Committees on Justice and Public Safety and to the Joint Legislative Commission on Governmental Operations on:

- (1) The purpose and activities of that part of the Appellate Defender's Office devoted to death penalty cases, and
- (2) An accounting of General Fund expenditures on assistance provided to paid counsel, State-appointed counsel, and **pro bono** attorneys.

(b) No Lobbying by Appellate Defender's Office. The Appellate Defender's Office shall not lobby any entity, organization, or legislative body to urge either abolition or retention of the death penalty. If the Appellate Defender's Office or any of its employees fail to comply with this section or with any of the duties of the Appellate Defender's Office related to death penalty cases, the Director of the Administrative Office of the Courts may refuse to seek continued State funding for that part of the Appellate Defender's Office devoted to death penalty cases, or take such other actions as the Director considers appropriate.

(c) Clarify Responsibilities of Appellate Defender. G.S. 7A-486.3 reads as rewritten:

" § 7A-486.3. *Duties.*

The appellate defender shall:

- (1) Represent indigent persons subsequent to conviction in trial courts pursuant to assignment by trial court judges under the general supervision of the Chief Justice of the Supreme Court. The Chief Justice may, following consultation with the appellate defender and consistent with the resources available to the appellate defender to ensure quality criminal defense services by the appellate defender's office, authorize the appellate defender not to accept assignments of certain appeals but instead to cause those appeals to be assigned

- either to a local public defender's office or to private assigned counsel.
- (2) Maintain a clearinghouse of materials and a repository of briefs prepared by the appellate defender to be made available to private counsel representing indigents in criminal cases.
 - (3) Provide continuing legal education training to assistant appellate defenders and to private counsel representing indigents in criminal cases, including capital cases, as resources are available.
 - (4) Provide consulting services to attorneys representing defendants in capital cases.
 - (5) Recruit qualified members of the private bar who are willing to provide representation in State and federal death penalty postconviction proceedings.
 - (6) In his discretion, serve as counsel of record for indigent defendants in capital cases in State court.
 - (7) Undertake direct representation and consultation in capital cases pending in federal court only to the extent that such work is fully federally funded."

Requested by: Representatives Anderson, Redwine, Senator Marvin
 -----TERMINATION OF AUTOMATIC DISMISSAL PROGRAMS

Sec. 84. Effective August 1, 1991, the programs in Prosecutorial Districts 5, 25, 26, 27A, and 27B for dismissing all minor traffic citation court cases and forgiving the payment of all court costs upon the completion by the offender of a "defensive driving course" or "traffic safety school" shall be terminated. No such program may be established or operated in any judicial or prosecutorial district except by express enactment of the General Assembly.

Requested by: Representatives Anderson, Redwine, Senators Marvin, Odom
 -----COMMUNITY PENALTIES PROGRAMS

Sec. 84.1. (a) Of the funds appropriated in this act to the Judicial Department to conduct the community penalty programs, the sum of \$1,518,912 shall be allocated among the community penalties programs listed below as follows:

One Step Further, Inc.	\$139.664
Services to Nash County	
Community Penalties Program	44,000

Services to Rockingham/Caswell	40,900
Fayetteville Area Sentencing Center, Inc.	131,878
Re-Entry, Inc.	93,500
Repay, Inc.	100,045
Community Corrections Resources, Inc.	104,379
Western Carolinians for Criminal Justice, Inc.	100,300
Prison & Jail Project, Inc.	100,300
Community Penalties Program, Inc.	68,213
Jacksonville Community Penalties, Inc.	89,250
Services to Sampson, Duplin, and Jones Counties	55,000
Gaston Community Penalties, Inc.	53,661
Services to Cleveland and Lincoln Counties	38,000
Dispute Settlement Center, Inc.	53,661
Appropriate Punishment Option, Inc.	53,661
Mecklenburg Community Corrections	93,500

Neuse River Council of Governments DBA Neuse River Community Penalties Program	55,000
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Tuscarora Tribe of North Carolina	52,000
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Citizens for Community Justice	52,000.
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(b) Funds allocated in subsection (a) and not used by the community penalties programs listed above may be used by the Judicial Department to establish new community penalties programs.

The Judicial Department shall report annually to the Senate and House Appropriations Base Budget Committees on Justice and Public Safety and to the Fiscal Research Division on the administrative expenditures of the community penalties programs.

PART 21.-----DEPARTMENT OF JUSTICE

Requested by: Representatives Anderson, Redwine, Senator Marvin
-----USE OF SEIZED AND FORFEITED PROPERTY
TRANSFERRED TO STATE LAW ENFORCEMENT AGENCIES
BY THE FEDERAL GOVERNMENT

Sec. 85. (a) Assets transferred to the Department of Justice during the 1991-93 biennium pursuant to 19 U.S.C. § 1616a shall be credited to the budget of that Department and shall result in an increase of law enforcement resources for the Department. Assets transferred to the Department of Crime Control and Public Safety during the 1991-93 biennium pursuant to 19 U.S.C. § 1616a shall be credited to the budget of that Department and shall result in an increase of law enforcement resources for the Department. The departments shall report to the Joint Legislative Commission on Governmental Operations upon the receipt of these assets and, before using these assets, shall report the intended use of these assets and the departmental priorities on which the assets may be expended.

The General Assembly finds that the use of these assets for new projects, the acquisition of real property, repair of buildings where such repair includes structural change, and construction of or additions to buildings may result in additional expenses for the State in future fiscal periods; therefore, the Department of Justice and the Department of Crime Control and Public Safety are prohibited from using these assets for such purposes without the prior approval of the General Assembly.

(b) This section does not apply to the extent that it prevents North Carolina law enforcement agencies from receiving funds from the United States Department of Justice pursuant to 19 U.S.C. § 1616a.

Requested by: Representatives Anderson, Redwine, Senator Marvin
-----DEPARTMENT OF JUSTICE STUDY/CHARGES FOR LEGAL SERVICES TO LOCAL GOVERNMENTS AND STATE AGENCIES

Sec. 86. (a) The Department of Justice shall study the feasibility of charging local governments for legal services rendered to those governments by the Office of the Attorney General. The Department of Justice shall consider the number of requests for legal assistance received from local governments, the type of legal assistance requested, the time required to respond to the requests, and any other matters related to the issue of charging local governments for legal assistance. The Department of Justice shall also consider what fee, if any, is appropriate to charge local governments for such legal services. The Department of Justice shall report its findings and recommendations to the 1991 General Assembly, 1992 Regular Session.

(b) The Department of Justice shall study the feasibility of an increase in the fees currently charged other State departments and agencies for its legal services, such fee increase to be effective for the 1993-94 fiscal year. The Department of Justice shall also study the feasibility of requiring all State departments and agencies that have attorneys assigned to them by the Attorney General to pay the compensation, including salaries and benefits, for those legal positions. The Department of Justice shall report its findings and recommendations to the 1991 General Assembly, 1992 Regular Session.

Requested by: Representatives Anderson, Redwine, Senator Marvin
-----DEPARTMENT OF TRANSPORTATION TO PAY COMPENSATION OF ATTORNEYS ASSIGNED TO MOTOR VEHICLES DIVISION BY THE ATTORNEY GENERAL

Sec. 87. The Department of Transportation shall pay the compensation, including salaries and benefits, of the attorneys assigned to the Division of Motor Vehicles by the Attorney General. The funds to pay the compensation for those legal positions shall be taken from the Highway Fund.

Requested by: Representatives Anderson, Redwine, Senator Marvin
 -----JUSTICE ACADEMY STUDY/STUDENT REGISTRATION FEE

Sec. 88. The North Carolina Justice Academy shall study the possibility of requiring a student registration fee. The study shall include consideration of the actual cost for a student to attend the Justice Academy, the merits of charging a registration fee, and the amount, if any, that should be charged as a registration fee. The North Carolina Justice Academy shall report its findings and recommendations to the 1991 General Assembly, 1992 Regular Session.

Requested by: Representatives Anderson, Redwine, Senator Marvin
 -----SBI USE OF COURT-ORDERED RESTITUTION FUNDS

Sec. 89. The State Bureau of Investigation (SBI) may use funds available from court-ordered restitution in undercover drug operations.

Requested by: Representatives Anderson, Redwine, Senator Marvin
 -----PRIVATE PROTECTIVE SERVICES AND ALARM SYSTEMS LICENSING BOARDS PAY FOR USE OF STATE FACILITIES AND SERVICES

Sec. 90. The Private Protective Services and Alarm Systems Licensing Boards shall pay the appropriate State agency for the use of physical facilities and services provided to those boards by the State.

Requested by: Representatives Anderson, Redwine, Senators Marvin, Odom

-----TRANSFER LEGAL AND SUPPORT STAFF POSITIONS FROM VARIOUS DEPARTMENTS TO THE DEPARTMENT OF JUSTICE

Sec. 91. (a) The following positions are transferred to the Department of Justice from the Department of Administration:

Dept Agency	Position Number	Position Title	Grade
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ADMINISTRATION

Radioactive Waste	0095	Paralegal II	67
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(b) The following positions are transferred to the Department of Justice from the Department of Agriculture:

Dept Agency	Position Number	Position Title	Grade
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AGRICULTURE

Administration
Legal Staff

0105

Agency Legal
Specialist II

75

(c) The following positions are transferred to the Department of Justice from the Department of Community Colleges:

Dept Agency	Position Number	Position Title	Grade
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COMMUNITY COLLEGES

Legal Staff

0180

(to 1160)

Paralegal I

65

(d) The following positions are transferred to the Department of Justice from the Department of Correction:

Dept Agency	Position Number	Position Title	Grade
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CORRECTION

Legal Staff

0074

Agency Legal
Specialist III

77

0078

Agency Legal
Specialist II

75

0080

Agency Legal
Specialist II

75

0079

Agency Legal
Specialist II

75

	Paralegal III (Employee Title = Paralegal II)	70 67
0084		
Support Staff		
0088	Administrative Secretary IV	61
0090	Clerk-Typist IV	59
0092	Clerk-Typist III	57

(e) The following positions are transferred to the Department of Justice from the Department of Environment, Health, and Natural Resources:

Dept Agency	Position Number	Position Title	Grade
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ENVIRONMENT, HEALTH AND NATURAL RESOURCES

Legal Staff Administration			
	1902	Agency Legal Specialist III	77
	1903	Agency Legal Specialist III	77
	1906	Agency Legal Specialist I	73
	1907	Agency Legal Specialist III	77
	1909	Agency Legal Specialist III	77
	1911	Agency Legal Specialist II	75
	1912	Agency Legal Specialist III	77

	1915	Agency Legal Specialist III	77
	1916	Agency Legal Specialist III	77
	1918	Agency Legal Specialist I	73
Marine Fisheries	8442	Paralegal II	67
	8443	Paralegal II	67
	8444	Paralegal II	67
Solid Waste	4523	Attorney II	79
Support Staff	1914	Clerk-Steno V	61
	1917	Clerk-Typist IV	59
	1908	Clerk-Typist IV	59
	1905	Clerk-Typist IV	59
	4035	Secretary III	57

(f) The following positions are transferred to the Department of Justice from the Department of Human Resources:

Dept Agency	Position Number	Position Title	Grade
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HUMAN RESOURCES

Legal Staff

Office of the Secretary	0713	Agency Legal Specialist II	75
Division of Youth Services	0003	Agency Legal Specialist I	73

Division of
Mental Health,
Developmental
Disabilities, and
Substance Abuse
Services

0025

Agency Legal
Specialist I

73

(g) The following positions are transferred to the Department of Justice from the Department of Insurance:

Dept Agency	Position Number	Position Title	Grade
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INSURANCE

Legal Services
Division

0114

Attorney II

79

0117

Attorney II

79

0120

Attorney II

79

0122

Attorney II

79

0123

Attorney II

79

0124

Attorney II

79

0125

Attorney II

75

0126

Agency Legal
Specialist III

77

0133

Paralegal II

67

Field Audit

0420

Attorney II

79

Support Staff

0134

Clerk-Typist IV

59

0138

Clerk-Typist IV
Administrative

59

0139	Secretary V	61
0144	Clerk-Typist IV	59

(h) The following positions are transferred to the Department of Justice from the Department of Revenue:

Dept Agency	Position Number	Position Title	Grade
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REVENUE

Legal Staff Field Operations	8210	Agency Legal Specialist II	75
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(i) The following positions are transferred to the Department of Justice from the Department of the Secretary of State:

Dept Agency	Position Number	Position Title	Grade
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SECRETARY OF STATE

Legal Staff			
Corporations Division	0200	Attorney- Corporations Filing	75
Support Staff	0420	Clerk-Steno III	57

(j) The equipment, supplies, records, and other property to support the positions transferred by this section are also transferred from the appropriate departments to the Department of Justice.

(k) Funds are transferred in this Title to the Department of Justice for the positions, equipment, supplies, and other property transferred to the Department of Justice by this section. Funds for the 1992-93 fiscal year for those positions, equipment, supplies, and other property shall be reduced by fifteen percent (15%). To achieve the fifteen percent (15%) reduction required by this section, the Attorney General shall identify specific reductions relating to equipment, supplies, and other property transferred under this section and shall

identify the positions transferred to the Department of Justice by this section to be eliminated. The Attorney General shall report to the Legislative Commission on Governmental Operations and the Fiscal Research Division by March 15, 1992, regarding those reductions and positions to be eliminated. By July 1, 1992, the Attorney General shall permanently make reductions relating to equipment, supplies, and other property transferred by this section and shall eliminate the positions transferred to the Department of Justice by this section to achieve the fifteen percent (15%) reduction.

(l) Any department from which a position is transferred under this section to the Department of Justice shall continue to provide adequate office space for legal and support staff assigned to that department by the Attorney General.

(m) Any disputes arising out of this transfer shall be resolved by the Director of the Budget.

Requested by: Representatives Anderson, Redwine, Senators Marvin, Odom

-----DEPARTMENT OF JUSTICE/DRUG INFORMATION SYSTEM

Sec. 92. The North Carolina Drug Information System proposed in the State's 1991 Criminal Justice Improvement and Drug Control Grant application submitted to the United States Department of Justice, Bureau of Justice Assistance, shall be housed in the Department of Justice and shall be under the supervision and control of the Attorney General. The Department of Justice and the Department of Crime Control and Public Safety shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by March 15, 1992, regarding the progress in implementing the system.

Requested by: Representatives Anderson, Redwine, Senators Marvin, Odom

-----SBI FUNDS/SPENDING PRIORITIES

Sec. 92.1. (a) Of the funds appropriated in this Title to the Department of Justice, State Bureau of Investigation, for the 1991-92 fiscal year and the 1992-93 fiscal year for overtime payments, the first priority for use of the funds by the Department shall be:

- (1) To make overtime payments to SBI agents in the Field Investigations Division; and
- (2) To make overtime payments to supervisory personnel receiving overtime payments as of June 30, 1991, up to a maximum of \$5,200 annually per individual.

(b) The Office of State Personnel shall study all supervisory personnel positions in the State Bureau of Investigation to determine the appropriate salary grade and classification of those positions and shall report its findings and recommendations to the Senate and House Appropriations Committees on Justice and Public Safety and the Fiscal Research Division by March 1, 1992.

PART 22.-----DEPARTMENT OF HUMAN RESOURCES

Requested by: Representatives Nye, Easterling, Senator Richardson
-----MEDICAID

Sec. 93. (a) Funds appropriated in this Title for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy. Funds appropriated for these services shall be expended in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection.

Services and payment bases:

- (1) Hospital-Inpatient - Payment for hospital inpatient services will be prescribed in the State Plan as established by the Department of Human Resources. Administrative days for any period of hospitalization shall be limited to a maximum of three days.
- (2) Hospital-Outpatient - Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Human Resources.
- (3) Nursing Facilities - As prescribed under the reimbursement plan for Nursing Facilities. Nursing facilities providing services to Medicaid recipients who also qualify for Medicare, must be enrolled in the Medicare program as a condition of participation in the Medicaid program, subject to phase-in certification for those nursing facilities not already enrolled in Medicare. State facilities are not subject to the requirement to enroll in the Medicare Program.
- (4) Intermediate Care Facilities for the Mentally Retarded - As prescribed under the State Plan for reimbursing intermediate care facilities for the mentally retarded.
- (5) Drugs - Drug costs as allowed by federal regulations plus a professional services fee per month excluding refills for the same drug or generic equivalent during the same month. Reimbursement shall be available for up to six prescriptions per recipient, per month, including refills. Payments for

drugs are subject to the provisions of subsection (h) of this section and to the provisions at the end of subsection (a) of this section, or in accordance with a plan adopted by the Department of Human Resources consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the plan adopted by the Department of Human Resources, consistent with federal reimbursement regulations. Adjustments to the professional services fee shall be established by the General Assembly.

- (6) Physicians, Chiropractors, Podiatrists, Optometrists, Dentists, Certified Nurse Midwife Services - Fee schedules as developed by the Department of Human Resources. Payments for dental services are subject to the provisions of subsection (g) of this section.
- (7) Community Alternative Program, EPSDT Screens - Payment to be made in accordance with rate schedule developed by the Department of Human Resources.
- (8) Home Health, Private Duty Nursing, Clinic Services, Prepaid Health Plans - Payment to be made according to reimbursement plans developed by the Department of Human Resources.
- (9) Medicare Buy-In - Social Security Administration premium.
- (10) Ambulance Services - Uniform fee schedules as developed by the Department of Human Resources.
- (11) Hearing Aids - Actual cost plus a dispensing fee.
- (12) Rural Health Clinic Services - Provider based - reasonable cost; nonprovider based - single cost reimbursement rate per clinic visit.
- (13) Family Planning - Negotiated rate for local health departments. For other providers - see specific services, for instance, hospitals, physicians.
- (14) Independent Laboratory and X-Ray services - Uniform fee schedules as developed by the Department of Human Resources.
- (15) Optical Supplies - One hundred percent (100%) of reasonable wholesale cost of materials.
- (16) Ambulatory Surgical Centers - Payment as prescribed in the reimbursement plan established by the Department of Human Resources.
- (17) Medicare Crossover Claims - An amount up to the actual coinsurance or deductible or both, in accordance with the plan, as approved by the Department of Human Resources.

- (18) Physical Therapy and Speech Therapy - Services limited to EPSDT eligible children. Payments are to be made only to the Children's Special Health Services program at rates negotiated by the Department of Human Resources.
- (19) Personal Care Services - Payment in accordance with plan approved by the Department of Human Resources.
- (20) Case Management Services - Reimbursement in accordance with the availability of funds to be transferred within the Department of Human Resources.
- (21) Hospice - Services may be provided in accordance with plan developed by the Department of Human Resources.
- (22) Other Mental Health Services - Unless otherwise covered by this section, coverage is limited to agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, and reimbursement is made in accordance with a plan developed by the Department of Human Resources not to exceed the upper limits established in federal regulations.
- (23) Medically Necessary Prosthetics or Orthotics for EPSDT Eligible Children - Reimbursement in accordance with plan approved by the Department of Human Resources.
- (24) Health Insurance Premiums - Payments to be made in accordance with the plan adopted by the Department of Human Resources consistent with federal regulations.

Reimbursement is available for up to 24 visits per recipient per year to any one or combinations of the following: physicians, clinics, hospital outpatients, optometrists, chiropractors, and podiatrists. Prenatal services, all EPSDT children, and emergency rooms are exempt from the visit limitations contained in this paragraph. Exceptions may be authorized by the Department of Human Resources where the life of the patient would be threatened without such additional care. Any person who is determined by the Department to be exempt from the 24-visit limitation may also be exempt from the six-prescription limitation.

(b) Allocation of Nonfederal Cost of Medicaid. The State shall pay eight-five percent (85%); the county shall pay fifteen percent (15%) of the nonfederal costs of all applicable services listed in this section.

(c) Copayment for Medicaid Services. The Department of Human Resources may establish copayment up to the maximum permitted by federal law and regulation.

(d) Medicaid and Aid to Families with Dependent Children Income Eligibility Standards. Effective January 1, 1990, the

maximum net family annual income eligibility standards for Medicaid and Aid to Families with Dependent Children, and the Standard of Need for Aid to Families with Dependent Children shall be as follows.

<u>Categorically Needy</u>		<u>Medically Needy</u>	
<u>Family Size</u>	<u>Standard Of Need</u>	<u>AFDC Payment Level*</u>	<u>AA,AB,AD*</u>
1	\$ 4,344	\$ 2,172	\$ 2,900
2	5,664	2,832	3,800
3	6,528	3,264	4,400
4	7,128	3,564	4,800
5	7,776	3,888	5,200
6	8,376	4,188	5,600
7	8,952	4,476	6,000
8	9,256	4,680	6,300

*Aid to Families with Dependent Children (AFDC); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

The payment level for Aid to Families with Dependent Children shall be fifty percent (50%) of the standard of need.

These standards may be changed with the approval of the Director of the Budget with the advice of the Advisory Budget Commission.

(e) Spouse Responsibility. The Department of Human Resources, Division of Medical Assistance, may not consider the income or assets of the spouse of a person who is admitted as a long-term care patient in a certified public or private intermediate care or skilled nursing facility to be available to the institutionalized person. This provision will remain in effect until superseded by federal law under the Medicare Catastrophic Coverage Act of 1988, on September 1, 1989.

(f) Dental Coverage Limits. Dental services will be provided on a restricted basis in accordance with regulations developed by the Department. Funds for dental services shall be disbursed only with prior approval by the Department of Human Resources, Division of Medical Assistance, as required by this subsection. No prior approval shall be required for emergency services or routine services. Routine services are defined as examinations, X rays, prophylaxes, nonsurgical tooth extractions, amalgam fillings, and fluoride treatments. Prior approval shall be required for all other services and for routine services performed more than two times during a consecutive 12-month period. The Department of Human Resources shall adopt rules, as provided by the Administrative Procedure Act, to implement this subsection.

(g) Dispensing of Generic Drugs. Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, under the Medical Assistance Program (Title XIX of the Social Security Act) a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber personally indicates, either orally or in his own handwriting on the prescription order, "dispense as written" or words of similar meaning. Generic drugs, when available in the pharmacy, shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand name drugs, subject to the prescriber's "dispense as written" order as noted above.

As used in this subsection "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

(h) Exceptions to Service Limitations, Eligibility Requirements, and Payments. Service limitations, eligibility requirements, and payments, and payments bases in this section may be waived by the Department of Human Resources, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans or community based services programs in accordance with plans approved by the United States Department of Health and Human Services, or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient.

(i) Volume Purchase Plans and Single Source Procurement. The Department of Human Resources, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement or other similar processes in order to improve cost containment.

(j) Cost Containment Programs. The Department of Human Resources, Division of Medical Assistance, may undertake cost containment programs including preadmissions to hospitals and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.

(k) For all Medicaid eligibility classifications for which the federal poverty level is used as an income limit for eligibility determination, the income limits will be updated each July 1 immediately following publication of federal poverty guidelines.

(l) Effective January 1, 1988, the Department of Human Resources shall provide Medicaid to 19-, 20-, and 21-year-olds in accordance with federal rules and regulations.

(m) The Department of Human Resources shall provide coverage to pregnant women and children according to the following schedule:

- (1) Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each July shall be covered for Medicaid benefits;
- (2) Infants under the age of 1 with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each July 1, shall be covered for Medicaid benefits;
- (3) Children aged 1 through 5 with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guidelines as revised each July 1 shall be covered for Medicaid benefits; and
- (4) Children aged 6 through 18 who were born after September 30, 1983, with family incomes equal to the federal poverty guidelines as revised each July 1, shall be covered for Medicaid benefits.

Services to pregnant women eligible under this section continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant women, to infants, and to children eligible under this section, no resources test shall be applied.

(n) The Department of Human Resources may use Medicaid funds budgeted from program services to support the cost of administrative activities to the extent that these administrative activities produce a net savings in services requirements. Administrative initiatives funded by this section shall be first approved by the Office of State Budget and Management.

Requested by: Representatives Easterling, Nye. Senators Richardson, Royall

-----GENERAL REDUCTIONS AND SAVINGS/RULES

Sec. 95. The Department of Human Resources, Division of Medical Assistance, shall effect reductions and accomplish savings for the 1991-92 fiscal year and the 1992-93 fiscal year and shall adopt rules necessary to effect these reductions and accomplish these savings at the earliest appropriate date.

Requested by: Representatives Easterling, Nye, Senator Richardson

----FAMILY SUPPORT ACT

Sec. 96. (a) Section 229 of Chapter 1014 of the 1985 Session Laws is amended by adding a new subsection to read:

"(d) If any provision of this section is held invalid by a court of competent jurisdiction, the invalidity shall not affect the remaining provisions of this section that can be given effect."

(b) The General Assembly finds that it is in the best interest of the State and of all its citizens to encourage recipients of Aid to Families with Dependent Children to obtain jobs and become self-sufficient. It further finds that, by continuing medical assistance and providing limited wage assistance to those recipients who are working, the State will make it possible to help many recipients to be able to keep their jobs, support their families, and become self-sufficient.

(c) The Social Services Commission shall adopt rules to change the way it budgets Aid to Families with Dependent Children payments that will result in more recipients being able to find work and keep working. These rules shall include subtracting countable income from the State standard of need, and paying a percentage of the difference. The percentage that shall be applied to determine the amount of assistance shall be the same percentage set in the Current Operations Appropriations Act that determines the Aid to Families of Dependent Children payment level from the standard of need.

Requested by: Representatives Nye, Easterling, Senator Richardson

----RETROSPECTIVE ACCOUNTING ADJUSTMENT

Sec. 97. The Department of Human Resources shall use funds appropriated to it by this Title to provide a State supplementary payment to Aid to Families of Dependent Children households adversely affected by the retrospective accounting procedure as allowed under section 403(a) of the Social Security Act as amended by section 157(a) of the Tax Equity and Fiscal Responsibility Act of 1982. The amount of the State supplement shall not exceed the maximum payment standard for the Aid to Families with Dependent Children Program.

Requested by: Representatives Easterling, Nye, Senator Richardson

----AFDC/WOMEN IN THIRD TRIMESTER OF PREGNANCY ADJUSTMENT

Sec. 98. The Division of Social Services, Department of Human Resources, shall provide Aid to Families with Dependent Children to women in their third trimester of pregnancy regardless of whether these women have children, if they otherwise qualify for these payments.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----ADOPTION SUBSIDY

Sec. 99. The adoption subsidy paid monthly by the Division of Social Services, Department of Human Resources, to eligible families who adopt hard-to-place children shall be established at \$150.00 per child per month.

Requested by: Representatives Easterling, Nye, Senator Richardson
-----FOSTER CARE

Sec. 100. Funds appropriated to the Department of Human Resources by this Title for foster care assistance rates shall be used to set the rates at \$265.00 per child per month.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----EMERGENCY ASSISTANCE

Sec. 101. The Division of Social Services, Department of Human Resources, shall not expend more State funds than are appropriated for Emergency Assistance by this Title. Within this limit, Emergency Assistance benefits shall not exceed \$300.00 per year per family, payable over a 30-day period. After this 30-day period, Emergency Assistance benefits are not available to that family until 12 months have elapsed from the initial authorization date. The family may have no more than a total of \$300.00 in liquid assets in order to qualify for any Emergency Assistance pursuant to this section.

It is the intent of the General Assembly that these Emergency Assistance funds shall only be used to provide assistance to persons to alleviate an emergency. In evaluating whether an emergency exists, the county departments of social services shall apply prudent judgment to evaluate each emergency on its own merits. Prudent judgment will permit departments of social services to consider whether the client created the emergency and whether the assistance will resolve the emergency.

Requested by: Representatives Easterling, Nye, Senator Richardson
-----FOOD STAMP OUTREACH

Sec. 102. The Department of Human Resources shall continue a Food Stamp Outreach Program. Under the Program, the Department shall inform public and private agencies, community groups, potentially eligible persons, and the general public regarding the eligibility requirements of the Food Stamp Program. The Department shall maintain a referral list of public and private agencies, community groups, and interested persons and organizations who serve low-income persons. The Department shall inform these

agencies and persons regarding the Food Stamp Program and changes in the law that affect client eligibility or the extent of benefits. The Department shall develop and distribute informational materials, such as public service announcements, brochures, pamphlets, posters, and correspondence.

Requested by: Representatives Nye, Easterling, Senator Richardson

-----CHILD PROTECTIVE SERVICES

Sec. 103. (a) Of the funds appropriated to the Department of Human Resources, Division of Social Services for Child Protective Services in this Title, the Division shall use up to \$175,900 in each fiscal year of the 1991-93 biennium to provide consultation and technical assistance to county departments of social services to strengthen and support local child protective services. The remaining funds shall be allocated to the county departments of social services as follows:

- (1) \$10,000 for the 1991-92 fiscal year and \$10,000 for the 1992-93 fiscal year shall be allocated to each of the 15 county departments that did not receive an allocation of the 1985 State appropriation for child protective services;
- (2) In addition, each of the 100 county departments shall receive an allocation of \$10,000 for the 1991-92 fiscal year and \$10,000 for the 1992-93 fiscal year;
- (3) The balance of available funds shall be allocated to each county department based upon the percentage that the total number of abuse and neglect reports within that county represents to the statewide total number of abuse and neglect reports. These percentages shall be computed from the reports received by the Central Registry of Abuse and Neglect cases for the last two fiscal years.

(b) Funds allocated to county departments of social services pursuant to this section shall be used for staff carrying out investigations of reports of child abuse or neglect or providing protective or preventive services in cases in which the department confirms neglect, abuse, or dependency. If a county department demonstrates that it has adequate protective services staff, these funds may be used to purchase or provide treatment and other support services to children and their families in confirmed cases. All expenditures shall be directly in support of the department's program of protective services for children. These funds shall not be used to supplant any Social Services Block Grant funds or county appropriations previously budgeted for protective services for children.

(c) The Department of Human Resources, Division of Social Services, shall establish criteria and guidelines to assure that the

allocations to county departments of social services are used in accordance with the intent and purposes of this section.

Requested by: Representatives Easterling, Nye, Senator Richardson
-----CHILD CARING INSTITUTION REIMBURSEMENT

Sec. 104. (a) Funds appropriated to the Department of Human Resources, Division of Social Services, in this Title for the 1992-93 fiscal year for the monthly payment of State funds to private residential child care agencies for the provision of foster care shall be disbursed in accordance with rules established by the Social Services Commission pursuant to G.S. 143B-153(2)d., and in accordance with the following requirements:

- (1) Only those child caring agencies that have been receiving funds from the Division of Social Services that have been appropriated as grants-in-aid to non-State agencies shall be included in the disbursement unless additional State or federal funds are made available to permit disbursement to new child caring agencies. A new child caring agency may receive funds pursuant to this section only if the additional State or federal funds made available are sufficient to allow disbursements to the new agency without reducing the disbursement to the agencies already receiving funds;
 - (2) The formula for the disbursement of these funds shall be based on the assumption that the State is committed to paying allowable foster care maintenance costs and shall do so, to the extent that State and federal funds are available; and
 - (3) In any year that State and federal funds are not sufficient to pay each agency's allowable foster care maintenance costs, each participating agency's rate shall be reduced by the same percentage, so that each agency receives the same percentage of its allowable costs.
- (b) This section becomes effective July 1, 1992.

Requested by: Representatives Easterling, Nye, Senator Richardson
-----CHILD-PLACING AGENCIES CHANGE

Sec. 105. G.S. 143B-153(2) reads as rewritten:

- "(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:
- a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

- b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;
- c. For the placement and supervision of dependent and delinquent children and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and
- d. For the payment of ~~grants-in-aid and other State funds to private child-caring institutions. The payment and distribution of grants-in-aid funds to private child-caring institutions shall be regulated by the grant-in-aid (GIA) formula. This formula and any modifications of this formula shall be approved by the Advisory Budget Commission prior to its implementation.~~ child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services."

Requested by: Representatives Nye, Easterling, Senator Richardson
 -----LIMITATIONS ON STATE ABORTION FUND

Sec. 106. Section 93 of Chapter 479 of the 1985 Session Laws, as amended by Section 75 of Chapter 738 of the 1987 Session Laws, as amended by Section 72 of Chapter 500 of the 1989 Session Laws, as amended by Section 79 of Chapter 1066 of the 1989 Session Laws, Regular Session 1990, shall remain in effect on and after July 1, 1991, with the following exception:

Any reference in Section 93 of Chapter 479 of the 1985 Session Laws, as amended, to the 1985-86 fiscal year or the 1986-87 fiscal year applies to the 1991-92 fiscal year and the 1992-93 fiscal year.

Requested by: Representatives Easterling, Nye, Senator Richardson
 -----WILLIE M.

Sec. 107. (a) Legislative Findings. The General Assembly finds:

- (1) That there is a need in North Carolina to provide appropriate treatment and education programs to children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior;

- (2) That children meeting these criteria have been identified as a class in the case of Willie M., et al. v. Martin, et al., formerly Willie M., et al. v. Hunt, et al.; and
- (3) That these children have a need for a variety of services, in addition to those normally provided, that may include but are not limited to residential treatment services, educational services, and independent living arrangements.

(b) Funds appropriated by the General Assembly to the Department of Human Resources for serving members of the Willie M. Class shall be expended only for programs serving members of the Willie M. Class identified in Willie M., et al. v. Martin, et al., formerly Willie M., et al. v. Hunt, et al., including evaluations of potential class members. The Department shall reallocate these funds among services to Willie M. Class members during the year as it deems advisable in order to use the funds efficiently in providing appropriate services to Willie M. Class children.

(c) Funds for Department of Public Education. Funds appropriated to the Department of Public Education in this act for members of the Willie M. Class, are to establish a supplemental reserve fund to serve only members of the class identified in Willie M., et al. v. Martin, et al., formerly Willie M., et al. v. Hunt, et al.. These funds shall be allocated by the State Board of Education to the local education agencies to serve those class members who were not included in the regular average daily membership and the census of children with special needs, and to provide the additional program costs which exceed the per pupil allocation from the State Public School Fund and other State and federal funds for children with special needs.

(d) The Department of Human Resources shall continue to implement its prospective unit cost reimbursement system and shall ensure that unit cost rates reflect reasonable costs by conducting cost center service type rate comparisons and cost center line item budget reviews as may be necessary, and based upon these reviews and comparisons, the Department shall reduce and/or cap rates to programs which are significantly higher than those rates paid to other programs for the same service.

Any exception to this requirement shall be approved by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and shall be reported in the Department's annual joint report to the Governor and the General Assembly and in any periodic report the Department may make to the Joint Legislative Commission on Governmental Operations.

(d1) The Department of Human Resources shall implement a process to review those cases for whom treatment has been

recommended whose annual cost is anticipated to be in excess of one hundred fifty percent (150%) of the average annual per client expenditure of the previous fiscal year and shall take actions to reduce these treatment costs where appropriate.

(e) **Reporting Requirements.** The Department of Human Resources and the Department of Public Education shall submit, by May 1 of each fiscal year, a joint report to the Governor and the General Assembly on the progress achieved in serving members of the Willie M. Class. The report shall include the following unduplicated data for each county: (i) the number of children nominated for the Willie M. Class; (ii) the number of children actually identified as members of the Class in each county; (iii) the number of children served as members of the Class in each county; (iv) the number of children who remain unserved or for whom additional services are needed in order to be determined to be appropriately served; (v) the types and locations of treatment and education services provided to Class members; (vi) the cost of services, by type, to members of the Class and the maximum and minimum rates paid to providers for each service; (vii) the number of cases whose treatment costs were in excess of one hundred fifty percent (150%) of the average annual per client expenditure; (viii) information on the impact of treatment and education services on members of the Class; (ix) an explanation of, and justification for, any waiver of departmental rules that affect the Willie M. program; and (x) the total State funds expended, by program, on Willie M. Class members, other than those funds specifically appropriated for the Willie M. programs and services.

(e1) From existing funds available to it, the Department of Human Resources shall begin a process to document and assess individual class members' progress through the continuum of services. Standardized measures of functioning shall be administered periodically:

- (1) In the 1991-92 fiscal year, to a representative sample of class members;
- (2) In the 1992-93 fiscal year and thereafter, to each member of the class, and the information generated from these measures shall be used to assess client progress and program effectiveness.

(f) The Departments of Human Resources and Public Education shall provide periodic reports of expenditures and program effectiveness on behalf of the Willie M. Class to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division. As part of these reports, the Departments shall explain measures they have taken to control and reduce program expenditures.

(g) In fulfilling the responsibilities vested in it by the Constitution of North Carolina, the General Assembly finds:

- (1) That the General Assembly has evaluated the known needs of the State and has endeavored to satisfy those needs in comparison to their social and economic priorities; and
 - (2) That the funds appropriated will enable the development and implementation of placement and services for the class members in Willie M., et al. v. Martin, et al., formerly Willie M., et al. v. Hunt, et al., within a reasonable period of time considered within the context of the needs of the class members, the other needs of the State and the resources available to the State.
- (h) The General Assembly supports the efforts of the responsible officials and agencies of the State to meet the requirements of the court order in Willie M., et al. v. Martin, et al., formerly Willie M., et al. v. Hunt, et al. To ensure that Willie M. Class members are appropriately served, no State funds shall be expended on placement and services for Willie M. Class members except:

- (1) Funds specifically appropriated by the General Assembly for the placement and services of Willie M. Class members; and
- (2) Funds for placement and services for which Willie M. Class members are otherwise eligible.

This limitation shall not preclude the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Willie M. program subject to approval by the Director of the Budget. These Willie M. expenditures shall not be subject to the requirements of G.S. 143-18.

(i) Notwithstanding any other provision of law, if the Department of Human Resources determines that a local program is not providing appropriate services to members of the class identified in Willie M., et al. v. Martin, et al., formerly Willie M., et al. v. Hunt, et al., the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department of such programs.

(j) The Department of Human Resources and the Department of Public Instruction shall submit a plan to the General Assembly by April 1, 1992, outlining specific steps that are to be taken, within a specified time period, and within existing resources, to meet its obligation of providing appropriate services to class members. As part of this plan, the Department shall propose when and how the Willie M. program shall become fully self-regulating and self-monitoring.

Requested by: Representatives Nye, Easterling, Senator Richardson

-----WILLIE M. AUDIT CONTINUED

Sec. 108. The Office of State Auditor shall conduct a follow-up study of its 1990 performance audit of the Willie M. program to determine, along with other issues the Auditor considers appropriate, the following:

- (1) To what extent the range of reimbursement rates paid to area programs for similar types of services has been reduced;
- (2) To what extent the process implemented by the Department of Human Resources to review high-cost Willie M. clients has been effective in reducing the number of these clients and the costs of providing these clients services; and
- (3) To what extent a client evaluation process has been implemented by the Department of Human Resources and with what results.

The Auditor may also conduct an analysis of costs associated with providing services to a sample of clients, including high-cost clients, to determine the justification of the costs incurred. The Auditor shall submit the findings of this follow-up study of the Willie M. program to the General Assembly by February 15, 1993.

Requested by: Representatives Easterling, Nye, Senator Richardson

-----THOMAS S.

Sec. 109. (a) Funds appropriated to the Department of Human Resources in this Title for the 1991-92 fiscal year and the 1992-93 fiscal year for members of the Thomas S. Class as identified in Thomas S., et al. v. Flaherty, shall be placed in a reserve in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and shall be expended only for programs serving Thomas S. Class members or for services for those clients who are likely to become class members. To ensure that Thomas S. Class members are appropriately served, no State funds shall be expended on placement and services for Thomas S. Class members except:

- (1) Funds specifically appropriated by the General Assembly for the placement and services of Thomas S. Class members; and
- (2) Funds for placement and services for which Thomas S. Class members are otherwise eligible.

(b) The Department of Human Resources shall provide periodic reports of funds expended and services performed on behalf of members of the Thomas S. Class and on behalf of those clients who are likely to become class members to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office.

(c) Notwithstanding any other provision of law, if the Department of Human Resources determines that a local program is not providing minimally adequate services to members of the class identified in Thomas S., et al. v. Flaherty, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department of such programs.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----TRANSFERS OF CERTAIN FUNDS AUTHORIZED

Sec. 110. In order to assure maximum utilization of funds in county departments of social services, county or district health agencies, and area mental health, mental retardation, and substance abuse authorities, the Director of the Budget is authorized to transfer excess funds appropriated to a specific service or program or fund, whether specified in a block grant plan or General Fund appropriation, into another service or program or fund for local services within the budget of the respective State agency.

The Office of State Budget and Management shall report quarterly to the Joint Legislative Commission on Governmental Operations on each transfer authorized by this section.

Requested by: Representatives Easterling, Nye, Senator Richardson
-----MIXED BEVERAGE TAX FOR AREA MENTAL HEALTH PROGRAMS

Sec. 111. Funds received by the Department of Human Resources from the tax levied on mixed beverages under G.S. 18B-804(b)(8) shall be expended by the Department of Human Resources as prescribed by G.S. 18B-805(h). These funds shall be matched by local funds in accordance with the State/local ratio established by the current area mental health matching formula. These funds shall be allocated to the area mental health programs for substance abuse services on a per capita basis as determined by the Office of State Budget and Management's most recent estimates of county populations.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----ADAP TRANSPORTATION FUNDS

Sec. 112. (a) Reimbursement of Adult Developmental Activity Programs for transportation of clients shall be based on a cost per client basis. There shall be different levels of reimbursement based on documented cost levels.

(b) In reimbursing Adult Developmental Activity Programs, the Department of Human Resources shall base the reimbursement on the

distribution by cost range developed by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services in accordance with its most recently conducted cost study.

Requested by: Representatives Easterling, Nye, Senator Richardson
-----SPECIALIZED RESIDENTIAL CENTERS' BED CONVERSION

Sec. 113. Funds made available as a result of the conversion of State supported beds in specialized residential centers to ICF/MR beds shall be used to increase the State subsidy provided to centers. Funds made available to centers by this section shall be used, as they become available, to increase the subsidy rate to sixty-five percent (65%) of the statewide average cost of providing this service based on the most recent Specialized Community Residential Cost Study.

Funds made available in addition to those needed to increase the subsidy rate may be transferred to the Department of Human Resources, Division of Medical Assistance, as needed to be used as a State match for the converted ICF/MR beds.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----LIABILITY INSURANCE

Sec. 114. The Secretary of the Department of Human Resources, the Secretary of the Department of Environment, Health, and Natural Resources, and the Secretary of the Department of Correction may provide medical liability coverage not to exceed \$1,000,000 on behalf of employees of the Departments licensed to practice medicine or dentistry. This coverage may include commercial insurance or self-insurance and shall cover these employees for their acts or omissions only while they are engaged in providing medical and dental services pursuant to their State employment.

The coverage provided under this section shall not cover any employee for any act or omission that the employee knows or reasonably should know constitutes a violation of the applicable criminal laws of any state or the United States, or that arises out of any sexual, fraudulent, criminal, or malicious act, or out of any act amounting to willful or wanton negligence.

The coverage provided pursuant to this section shall not require any additional appropriations and shall not apply to any individual providing contractual service to the Department of Human Resources, the Department of Environment, Health, and Natural Resources, or the Department of Correction.

Requested by: Representatives Easterling, Nye, Senator Richardson
 -----NON-MEDICAID REIMBURSEMENT

Sec. 115. Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no more than those under the North Carolina Medical Assistance Program.

The Department of Human Resources may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of paragraph one of this section, the Department of Human Resources may negotiate with providers of medical services under the various Department of Human Resources' programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require these services that cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

Family Size	Medical Eye Care Adults	All Rehabilitation	Other
1	\$4,860	\$ 8,364	\$4,200
2	5,940	10,944	5,300
3	6,204	13,500	6,400
4	7,284	16,092	7,500
5	7,824	18,648	7,900
6	8,220	21,228	8,300
7	8,772	21,708	8,800
8	9,312	22,220	9,300

The eligibility level for children in the Medical Eye Care Program in the Division of Services for the Blind shall be one hundred percent (100%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year.

The Department of Human Resources shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----JOHN UMSTEAD HOSPITAL - PLANNING

Sec. 116. The Department of Human Resources may use funds that become available to it through gifts, federal or private grants, receipts from federal programs, or any other source in the 1991-92 fiscal year, for advance planning through the working drawings phase for a psychiatric facility at John Umstead Hospital.

Requested by: Representatives Easterling, Nye, Senator Richardson
-----DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES BUDGET CODE CONSOLIDATION

Sec. 117. Subject to the approval of the Office of State Budget and Management, in order to operate more efficiently, the Department of Human Resources may consolidate the appropriate budget codes of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and the institutions operated by the Division. Any consolidation shall ensure that each institution budget is clearly identifiable as a separate fund within the consolidated budget code or codes. To implement this change, the General Assembly approves the current budget code structure of the Division's and institutions' budgets for the 1991-93 fiscal biennium and authorizes the Department to proceed with appropriate consolidation of these budget codes during the 1991-93 fiscal biennium.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----DEVELOPMENTAL DAY CENTERS GRANT-IN-AID

Sec. 118. Of the funds appropriated in this Title, to the Department of Human Resources, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of \$2,260,470 for the 1991-92 fiscal year is transferred to the Department of Public Instruction for handicapped children aged 3 through 4 years who have been identified through Division of Mental Health, Developmental Disabilities, and Substance Abuse Services statewide services and who are served in developmental day centers. These funds shall be used to contract with area mental health, developmental disabilities, and substance abuse authorities or with public or private nonprofit developmental day centers to continue to serve handicapped children aged 3 through 4 years who are identified as needing developmental day services.

The Department of Public Instruction shall report to the General Assembly and to the Fiscal Research Division by May 1, 1992, regarding the use of the funds transferred to it by this section.

Requested by: Representatives Easterling, Nye, Senator Richardson

-----CAREGIVER SUPPORT SHARING

Sec. 119. (a) Of the funds appropriated to the Division of Aging, Department of Human Resources, by this Title for the 1991-93 fiscal biennium, the sum of \$1,008,000 for the 1991-92 fiscal year and the sum of \$1,008,000 for the 1992-93 fiscal year shall be used for services that support family caregivers of elderly persons with functional disabilities, whether physical or mental, who want to stay in their homes rather than be institutionalized but who need assistance with the activities of daily living in order to remain at home. The services that may be purchased from funds received under this section include:

- (1) Respite Care;
- (2) Adult Day Care;
- (3) Stipends and other related costs for senior companions, modeled after the federal Senior Companion Program; and
- (4) Other related services that meet needs not now adequately addressed by the services described in subdivisions (1) through (3) of this subsection.

(b) The Division of Aging shall expend funds for these services according to the population of persons 70 years of age or older in each region. The Division of Aging shall use a maximum of ninety-five percent (95%) of the funds it receives under this section for the services described in subdivisions (1) through (4) of subsection (a) of this section and may only use a maximum of five percent (5%) for technical assistance as described in subsection (c) of this section. The Division of Aging shall choose providers in accordance with procedures under the Older Americans Act. Funds allocated by the Division pursuant to this section shall be allocated by October 1 of each fiscal year. Effective July 1, 1992, local matching requirements shall be no less than ten percent (10%). State funding shall not exceed ninety percent (90%) of the reimbursable costs.

(c) The Division of Aging may contract for technical assistance. The technical assistance shall include training assistance, coordination of various service delivery and funding sources, and ideas for innovative ways to build a lasting system of services for family caregivers.

Requested by: Representatives Nye, Easterling, Senator Richardson

-----IN-HOME AGING SERVICES

Sec. 120. Of the funds appropriated to the Division of Aging, Department of Human Resources, by this Title for the 1991-93 fiscal biennium, the sum of \$720,000 for the 1991-92 fiscal year and the sum of \$720,000 for the 1992-93 fiscal year shall be used to provide

funds for additional in-home aide services that enable the frail elderly to remain in their homes and avoid institutionalization.

The Division shall administer the in-home aide services and activities funded by this section. The Division of Aging shall choose in-home service providers in accordance with procedures under the Older Americans Act and shall include the following criteria: documented capacity to provide care, adequacy of quality assurance, training, supervision, abuse prevention complaint mechanisms, and costs. All funds allocated by the Division pursuant to this section shall be allocated by October 1 of each fiscal year on the same basis as funding under the Older Americans Act. Effective July 1, 1992, local matching requirements shall be no less than ten percent (10%). State funding shall not exceed ninety percent (90%) of the reimbursable costs.

Requested by: Representatives Easterling, Nye, Senator Richardson
-----SENIOR CENTER OUTREACH

Sec. 121. (a) Of the funds appropriated to the Department of Human Resources, Division of Aging, by this Title for the 1991-93 fiscal biennium, \$403,800 for the 1991-92 fiscal year and \$403,800 for the 1992-93 fiscal year shall be used by the Division of Aging to enhance senior center programs as follows:

- (1) To test "satellite" services provided by existing senior centers to unserved or underserved areas; or
- (2) To provide start-up funds for new senior centers.

All of these funds shall be allocated by October 1 of each fiscal year.

(b) Prior to funds being allocated pursuant to this section for start-up funds for a new senior center, the county commissioners of the county in which the new center will be located shall:

- (1) Formally endorse the need for such a center;
- (2) Formally agree on the sponsoring agency for the center; and
- (3) Make a formal commitment to use local funds to support the ongoing operation of the center.

(c) Effective July 1, 1992, local matching requirements shall be no less than ten percent (10%). State funding shall not exceed ninety percent (90%) of reimbursable costs.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----FUNDS TO MATCH FEDERAL FUNDS FOR AGING

Sec. 122. The Division of Aging, Department of Human Resources, may use funds appropriated in this Title to provide the State matching requirement necessary to draw down federal money available through Title III-D of the Older Americans Act for in-home

services for the frail elderly, including those with Alzheimer's Disease.

Requested by: Representatives Easterling, Nye, Senator Richardson

-----DAY CARE FUNDS MATCHING REQUIREMENT

Sec. 123. No local matching funds may be required by the Department of Human Resources as a condition of any locality's receiving any State day care funds appropriated by this act unless federal law requires such a match.

Requested by: Representatives Nye, Easterling, Senator Richardson

-----DAY CARE

Sec. 124. The Department of Human Resources shall distribute the funds appropriated and otherwise available to it for the purchase of slots in day care for minor children of needy families so as to serve the greatest number of children possible.

Requested by: Representatives Easterling, Nye, Senator Richardson

-----DAY CARE RATES

Sec. 125. (a) Rules for the monthly schedule of payments for the purchase of day care services for low-income children shall be established by the Social Services Commission pursuant to G.S. 143B-153(8)a., in accordance with the following requirements:

- (1) For day care facilities, as defined in G.S. 110-86(3), in which fewer than fifty percent (50%) of the enrollees are subsidized by State or federal funds, the State shall continue to pay the same fee paid by private paying parents for a child in the same age group in the same facility.
- (2) Facilities in which fifty percent (50%) or more of the enrollees are subsidized by State or federal funds may choose annually one of the following payment options:
 - a. The facility's payment rate for fiscal year 1985-86; or
 - b. The market rate, as calculated annually by the Division of Facility Services' Child Day Care Section in the Department of Human Resources.
- (3) A market rate shall be calculated for each county and for each age group or age category of enrollees and shall be representative of fees charged to unsubsidized private paying parents for each age group of enrollees within the county. The county market rates shall be calculated from facility fee schedules collected by the Child Day Care Section on a routine basis. The Section shall also calculate a statewide market rate for each age category. The Social Services

Commission shall adopt rules to establish minimum county rates that use the statewide market rates as a reference point.

- (4) Child day care homes as defined in G.S. 110-86(4) and individual child care arrangements may be paid the market rate for day care homes which shall be calculated at least biennially by the Child Day Care Section according to the method described in subsection (a)(3) of this section.

(b) Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes may participate in the program that provides for the purchase of care in day care facilities for minor children of needy families. No separate licensing requirements may be used to select facilities to participate.

Day care homes from which the State purchases day care services shall meet the standards established by the Child Day Care Commission pursuant to G.S. 110-101 and G.S. 110-105.1. Individual child care arrangements shall meet the requirements established by the Social Services Commission.

(c) County departments of social services shall continue to negotiate with day care providers for day care services below those rates prescribed by subsection (a) of this section. County departments are directed to purchase day care services so as to serve the greatest number of children possible with existing resources.

(d) To simplify current day care allocation methodology and more equitably distribute State day care funds, the Department of Human Resources shall apply the following allocation formula to all noncategorical federal and State day care funds used to pay the costs of necessary day care for minor children of needy families:

- (1) One-third of budgeted funds shall be distributed according to the county's population in relation to the total population of the State;
- (2) One-third of the budgeted funds shall be distributed according to the number of children under 6 years of age in a county who are living in families whose income is below the State poverty level in relation to the total number of children under 6 in the State in families whose income is below the poverty level; and
- (3) One-third of budgeted funds shall be distributed according to the number of working mothers with children under 6 years of age in a county in relation to the total number of working mothers with children under 6 in the State.

(e) Counties whose allocation, if based on previously used formulas, exceeds the allocation produced by the formula prescribed by this section may not have their allocations reduced to the level that results from application of the new formula. Counties whose

allocation, if based on previously used formulas, is less than the allocation produced by the formula prescribed by this section shall continue to receive the proportional share of those funds that they received pursuant to appropriations for this purpose by the 1985 General Assembly. The formula prescribed by this section shall not be implemented unless additional State or federal funds are made available. The additional funds must be sufficient to apply the new formula without reducing any county's allocation below the previous year's initial allocation for child day care.

Requested by: Representatives Nye, Easterling, Senator Richardson

-----COMMUNITY ACTION PROGRAM FUNDS

Sec. 126. For the 1991-92 fiscal year and the 1992-93 fiscal year, all agencies designated as eligible agencies pursuant to G.S. 108A-24 that receive Community Service Block Grant Funds may use those funds for the administration of agency programs. The amount of those funds used for administration of agency programs shall be limited to ten percent (10%) of the total annual budget of the agency as certified in the prior year's audit of the agency. The Department of Human Resources shall report annually to the Joint Legislative Commission on Governmental Operations and the House and Senate Appropriations Subcommittees on Human Resources beginning October 1, 1991, on the use of Community Service Block Grant Funds for administration of agency programs. The report shall show:

- (1) The total budget for each community action agency or limited purpose agency by program-funding source;
- (2) The amount of funds for administration provided by each program;
- (3) The criteria for determining the amount of funds used for administrative expenses; and
- (4) The number of persons served by each program.

Requested by: Representatives Easterling, Nye, Senator Richardson

-----DOMICILIARY RATE INCREASE

Sec. 127. Effective July 1, 1991, the maximum monthly rate for ambulatory residents in domiciliary care facilities shall be \$766.00 and the maximum monthly rate for semiambulatory residents shall be \$803.00. Effective July 1, 1992, the maximum monthly rates for ambulatory residents shall be increased to \$777.00 and for semiambulatory residents to \$814.00.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----DOMICILIARY STATE/COUNTY SHARE OF COSTS

Sec. 128. Article 3 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-139.5. Department of Human Resources; domiciliary State/county share of costs.

State funds available to the Department of Human Resources shall pay fifty percent (50%), and the counties shall pay fifty percent (50%) of the authorized rates for domiciliary care in homes for the aged and for family care homes including area mental health agency-operated or contracted-group homes."

Requested by: Representatives Easterling, Nye, Senator Richardson
-----DHR EMPLOYEES/IN-KIND MATCH

Sec. 129. Notwithstanding the limitations of G.S. 143B-139.4, the Secretary of the Department of Human Resources may assign employees of the Office of Rural Health and Resource Development to serve as in-kind match to nonprofit corporations working to establish health care programs that will improve health care access while controlling costs.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----NO EYE CLINICS IN CERTAIN COUNTIES

Sec. 130. No funds may be expended by the Division of Services for the Blind, Department of Human Resources, to hold eye clinics in any county in which an optometrist or ophthalmologist is willing to perform the services that would otherwise be performed by the clinic.

Requested by: Representatives Easterling, Nye, Senator Richardson
-----COMMUNITY-BASED ALTERNATIVES PARTICIPATION

Sec. 131. County governments participating in the Community-Based Alternatives Program shall certify annually to the Division of Youth Services, Department of Human Resources, that Community-Based Alternatives Aid to Counties shall not be used to duplicate or supplant other programs within the county.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----DEPARTMENT OF HUMAN RESOURCES PROGRAM FUNDS

Sec. 132. Notwithstanding the provisions of G.S. 143-23, the Secretary of the Department of Human Resources, with the approval of the Office of State Budget and Management, may use, to the extent possible, any funds appropriated or otherwise available to the

Department in the 1991-92 fiscal year for the Mental Health Accounts Receivable/Billing System.

Requested by: Representatives Easterling, Nye, Senator Richardson
-----SHORT-TERM LOAN FUND FOR INTERMEDIATE CARE FACILITIES/MENTAL RETARDATION FACILITIES

Sec. 133. The Department of Human Resources may use funds that become available to it through gifts, federal or private grants, receipts from federal programs, or any other resource to develop a revolving short-term loan fund to assist area mental health, developmental disabilities, and substance abuse programs and their nonprofit contract agencies in establishing community ICF/MR facilities.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----EXPANSION OF THE TARGET POPULATION FOR TASC SERVICES

Sec. 134. Treatment Alternatives to Street Crimes (TASC) services may include mentally ill offenders as well as substance abusing offenders.

Requested by: Representatives Easterling, Nye, Senator Richardson
-----CONVERSION OF MURDOCH CENTER BEDS TO INTERMEDIATE CARE FACILITY/MENTAL RETARDATION UNITS

Sec. 134.1. (a) The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services may use State funds made available from the conversion of units at Murdoch Center to Intermediate Care Facility/Mental Retardation units in order to expand community-based services as specified in the Mental Health Study Commission plans adopted by the General Assembly.

(b) This section expires June 30, 1993.

Requested by: Representatives Easterling, Nye, Senator Richardson
-----DHR AUTHORIZATION FOR USE OF AVAILABLE FUNDS FOR RECRUITMENT OF HEALTH CARE PROFESSIONALS

Sec. 135. G.S. 122C-112(b) reads as rewritten:

"(b) The Secretary may:

- (1) Acquire by purchase or otherwise in the name of the Department equipment, supplies, and other personal property necessary to carry out the mental health, developmental disabilities, and substance abuse programs;
- (2) Sponsor training opportunities in the fields of mental health, developmental disabilities, and substance abuse;

- (3) Promote and conduct research in the fields of mental health, developmental disabilities, and substance abuse;
- (4) Provide technical assistance for the development and improvement of prevention services;
- (5) Receive donations of money, securities, equipment, supplies, or any other personal property of any kind or description which shall be used by the Secretary for the purpose of carrying out mental health, developmental disabilities, and substance abuse programs. Any donations shall be reported to the Office of State Budget and Management as determined by that office;
- (6) Accept, allocate, and spend any federal funds for mental health, developmental disabilities, and substance abuse activities that may be made available to the State by the federal government. This Chapter shall be liberally construed in order that the State and its citizens may benefit fully from these funds. Any federal funds received shall be deposited with the State Treasurer and shall be appropriated by the General Assembly for the mental health, developmental disabilities, or substance abuse purposes specified;
- (7) Enter agreements authorized by G.S. 122C-346;
- (8) Accept, allocate, and spend funds from the United States Department of Defense to operate mental health demonstration projects for families of the uniformed services. Demonstration projects shall be operated through an area authority. The operation of these demonstration projects may be accomplished through subcontracts with one or more private sector ~~providers~~, providers; and
- (9) Authorize funds for contracting with a person, firm, or corporation for aid or assistance in locating, recruiting, or arranging employment of health care professionals in any facility listed in G.S. 122C-181, notwithstanding the provisions of G.S. 126-18."

Requested by: Representatives Nye, Easterling, Senator Richardson
 -----WILLIE M. SECURE TREATMENT FACILITY
 AUTHORIZATION

Sec. 136. G.S. 122C-181(a) reads as rewritten:

"(a) Except as provided in subsection (b) of this section, the Secretary shall operate the following facilities:

- (1) For the mentally ill:
 - a. Cherry Hospital;
 - b. Dorothea Dix Hospital;

- c. John Umstead Hospital; and
- d. Broughton Hospital; and
- (2) For the mentally retarded:
 - a. Caswell Center;
 - b. O'Berry Center;
 - c. Murdoch Center;
 - d. Western Carolina Center; and
 - e. Black Mountain Center; and
- (3) For substance abusers:
 - a. Walter B. Jones Alcohol and Drug Abuse Treatment Center at Greenville;
 - b. Alcohol and Drug Abuse Treatment Center at Butner; and
 - c. Alcohol and Drug Abuse Treatment Center at Black Mountain; and
- (4) As special care facilities:
 - a. Wilson Special Care Center;
 - b. Whitaker School; and
 - c. Wright School, School; and
 - d. Butner Adolescent Treatment Center."

Requested by: Representatives Nye, Easterling, Senator Richardson

-----EARLY EDUCATION/HANDICAPPED/FUNDS

Sec. 137. The Department of Human Resources shall ensure that, by October 1, 1991, all types of early intervention services referenced in G.S. 122C-3(13a), and any other such services the Secretary of Human Resources, in cooperation with the other appropriate agencies and upon the advice of the Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age, considers necessary, shall be available to all eligible infants and toddlers and their families, as defined in G.S. 122C-3(13a).

Requested by: Representatives Easterling, Nye, Diamont, Senator Richardson

-----CHILD PROTECTIVE SERVICES NON-SUPPLANT REQUIREMENT

Sec. 138. The Department of Human Resources, Division of Social Services shall ensure that local county departments of social services do not reduce federal fund disbursements or county appropriations for child protective services because they have received State appropriations for that purpose. The Department shall monitor local agency compliance with this provision and report its findings to the General Assembly by May 1, 1992.

PART 23.-----DEPARTMENT OF AGRICULTURE

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----AGRICULTURE TO MARKET FOREST PRODUCTS

Sec. 139. The Department of Agriculture shall market forest products through the Department's marketing programs.

PART 24.-----DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----MAIN STREET PROGRAM RESTRICTIONS

Sec. 140. (a) G.S. 143B-472.35(e) reads as rewritten:

"(e) A Main Street City that is selected may not receive a grant plus any loans pursuant to this act totaling less than ~~one hundred thousand dollars (\$100,000)~~ twenty thousand dollars (\$20,000) or more than three hundred thousand dollars (\$300,000)."

(b) Notwithstanding G.S. 143B-472.35(b), the Department of Economic and Community Development may transfer not more than \$40,000 of interest earnings credited to the Main Street Financial Incentive Fund pursuant to G.S. 143B-472.35(a), from the Fund to the North Carolina Main Street Center Program operating budget for fiscal year 1991-92.

(c) Notwithstanding G.S. 143B-472.35, the Department of Economic and Community Development shall transfer \$100,000 of interest earnings in the Main Street Financial Incentive Fund from the Fund to the General Fund for fiscal year 1991-92. The Department shall transfer funds pursuant to this subsection on July 1, 1991.

Requested by: Representatives Ethridge, H. Hunter, DeVane, Senator Martin of Pitt

-----WORKER TRAINING TRUST FUND

Sec. 141. (a) There is appropriated from the Worker Training Trust Fund to the Employment Security Commission of North Carolina the sum of \$5,459,673 for the 1991-92 fiscal year and the sum of \$6,059,673 for the 1992-93 fiscal year for the operation of local offices at the 1986-87 level of service.

(b) Notwithstanding G.S. 96-5(c), there is appropriated from the Special Employment Security Administration Fund to the Employment Security Commission of North Carolina, the sum of \$2,000,000 for the 1991-92 fiscal year and the sum of \$2,000,000 for the 1992-93 fiscal year for administration of the Veterans Employment Program.

Employment Services Program, and Unemployment Insurance Program.

(c) Supplemental federal funds or other additional funds received by the Employment Security Commission for similar purposes shall be expended prior to the expenditure of funds appropriated by this section.

(d) Notwithstanding the provisions of G.S. 96-5(f), there is appropriated from the Worker Training Trust Fund to the following agencies the following sums for the 1991-92 and the 1992-93 fiscal years for the following purposes:

- (1) \$3,000,000 for the 1991-92 fiscal year and \$2,400,000 for the 1992-93 fiscal year to the Department of Economic and Community Development, Division of Employment and Training, for the Employment and Training Grant Program.
- (2) \$500,000 for the 1991-92 fiscal year and \$500,000 for the 1992-93 fiscal year to the North Carolina Department of Labor for customized training of the unemployed and the working poor for specific jobs needed by employers through the Department's Pre-Apprenticeship Division.
- (3) \$2,000,000 for the 1991-92 fiscal year and \$2,000,000 for the 1992-93 fiscal year to the North Carolina Department of Human Resources to assist welfare recipients in gaining employment through the federally funded Job Opportunities and Basic Skills Program in such a way as to gain the maximum match of federal funds for the State dollars appropriated.
- (4) \$1,250,000 for the 1991-92 fiscal year and \$1,250,000 for the 1992-93 fiscal year to the North Carolina Department of Community Colleges to continue the Focused Industrial Training Program.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----WORKER TRAINING TRUST FUND/REVERSION OF FUNDS

Sec. 142. G.S. 96-5(f) reads as rewritten:

"(f) Employment Security Commission Reserve Fund. -- There is created in the State treasury a special trust fund, separate and apart from all other public moneys or funds of this State, to be known as the Employment Security Commission Reserve Fund, hereinafter 'Reserve Fund'. Except as provided herein and in G.S. 96-9(b)(3)j, all proceeds from the tax as defined in G.S. 96-9(b)(3)j and collected pursuant to G.S. 96-10 shall be paid into the Reserve Fund. The moneys in the Reserve Fund may be used by the Commission for loans to the Unemployment Insurance Fund, as security for loans

from the federal Unemployment Insurance Trust Fund, and to pay any interest required on advances under Title XII of the Social Security Act as required by G.S. 96-6(f), and shall be continuously available to the Commission for expenditure in accordance with the provisions of this section. The State Treasurer shall be ex officio the treasurer and custodian and shall invest said moneys in accordance with existing law as well as rules and regulations promulgated pursuant thereto. Furthermore, the State Treasurer shall disburse the moneys in accordance with the directions of the Commission and in accordance with such regulations as the Commission may prescribe.

Administrative costs for the collection of the tax and interest payable to the Reserve Fund shall be borne by the Special Employment Administration Fund. Refunds of interest and tax allowable under G.S. 96-9(b)(3)j shall be made from the Reserve Fund. No taxes shall be collected or paid into this fund during a calendar year when, as of the computation date (August 1) of the preceding calendar year, the balance of the fund equals to or exceeds one percent (1%) of the taxable wages.

The interest earned from investment of the Reserve Fund moneys shall be deposited in a fund hereby established in the State Treasurer's Office, to be known as the 'Worker Training Trust Fund'. These moneys shall be used to:

- (1) Fund programs, specifically for the benefit of unemployed workers or workers who have received notice of long-term layoff or permanent unemployment, which will enhance the employability of workers, including, but not limited to, adult basic education, adult high school or equivalency programs, occupational skills training programs, assessment, job counseling and placement programs;
- (2) Continue operation of local Employment Security Commission offices throughout the State; or
- (3) Provide refunds to employers.

The use of funds from the Worker Training Trust Fund, for the purposes set out in the above paragraph, shall be pursuant to appropriations in the Current Operations Appropriations Act. Funds deposited in the Worker Training Trust Fund prior to July 1, 1987, shall be used as provided in the Current Operations Appropriations Act for 1987-89. Funds appropriated from the Worker Training Trust Fund that are unexpended and unencumbered at the end of the fiscal year for which they are appropriated shall revert to the State treasury to the credit of the Worker Training Trust Fund in accordance with G.S. 143-18."

Requested by: Representatives H. Hunter, Ethridge, DeVane, Senator Martin of Pitt

-----UTILITIES REGULATORY FEE

Sec. 143. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1991.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----TOURISM PROMOTION FUNDS

Sec. 144. Funds appropriated in this Title to the Department of Economic and Community Development for tourism promotion grants shall be allocated according to per capita income, unemployment, and population growth in an effort to direct funds to counties most in need in terms of lowest per capita income, highest unemployment, and slowest population growth, in the following manner:

- (1) Counties 1 through 20 are each eligible to receive a maximum grant of \$7,500 for each fiscal year, provided these funds are matched on the basis of one non-State dollar for every four State dollars.
- (2) Counties 21 through 50 are each eligible to receive a maximum grant of \$3,500 for two of the next three fiscal years, provided these funds are matched on the basis of one non-State dollar for every three State dollars.
- (3) Counties 51 through 100 are each eligible to receive a maximum grant of \$3,500 for alternating fiscal years, beginning with the 1991-92 fiscal year, provided these funds are matched on the basis of four non-State dollars for every State dollar.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----PETROLEUM OVERCHARGE ATTORNEY FEES

Sec. 145. (a) Unless prohibited by federal law, rule, or regulation or preexisting settlement agreement, no later than October 1, 1989, the North Carolina Attorney General shall direct the withdrawal of all funds received in the cases of United States v. Exxon and Stripper Well that are held in accounts or reserves located out-of-State for payment of attorney fees and reasonable expenses incurred in connection with oil overcharge litigation authorized by the Attorney General. The Attorney General shall deposit these funds, and all

funds to be received from petroleum overcharge funds in the future for attorney fees and reasonable expenses, into the Special Reserve for Oil Overcharge Funds.

(b) All attorney fees and reasonable expenses incurred in connection with oil overcharge litigation shall be paid by the State Treasurer from petroleum overcharge funds that have been received by this State and deposited into the Special Reserve for Oil Overcharge Funds.

(c) Notwithstanding any other provision of law, the Attorney General may authorize the payment of attorney fees and reasonable expenses from the Special Reserve for Oil Overcharge Funds without further action of the General Assembly and funds are hereby appropriated from the Special Reserve for Oil Overcharge Funds for the 1991-92 fiscal year and for the 1992-93 fiscal year for that purpose.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----NORTH CAROLINA MANUFACTURING DIRECTORY PROCEEDS

Sec. 146. (a) The Department of Economic and Community Development may expend for industrial promotional advertising any amount collected from the sales of the North Carolina Manufacturing Directory above the sum of \$155,000 already budgeted for the 1991-92 and 1992-93 fiscal years.

(b) Beginning October 1, 1991, the Department shall submit quarterly reports to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. These reports shall include the amount of proceeds collected from the sales of the Directory and the amount spent on advertising pursuant to the provisions of this section.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----INDUSTRIAL DEVELOPMENT FUND/LOCAL MATCH

Sec. 147. Local governments requesting financial assistance from the Industrial Development Fund shall demonstrate to the satisfaction of the Department of Economic and Community Development that it would be an economic hardship for the local government to match State assistance from the Fund with local funds. The Department shall develop guidelines for determining hardship.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----BIOTECHNOLOGY CENTER

Sec. 148. (a) The North Carolina Biotechnology Center may recapture funds spent in support of successful research efforts in the nonacademic private sector.

(b) The North Carolina Biotechnology Center shall provide funding for biotechnology and related bioscience applications under its Economic and Corporate Development Program.

(c) Beginning October 1, 1991, the North Carolina Biotechnology Center shall provide quarterly reports on all of the Center's programs to the Joint Legislative Commission on Governmental Operations. The initial report shall include information on the activities and accomplishments during the past fiscal year, itemized expenditures during the past fiscal year with sources of funding, planned activities and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next 12 months. Subsequent reports shall include quarterly updates of the initial report.

(d) The North Carolina Biotechnology Center shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management and to the Fiscal Research Division in the same manner as State Departments and agencies in preparation for biennium budget requests.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----MCNC

Sec. 149. (a) MCNC shall present a written report on the progress of the supercomputer program on a quarterly basis to the Joint Legislative Commission on Governmental Operations through fiscal years 1991-92 and 1992-93. The written reports shall contain at least the following information: the major accomplishments since the last report; the major activities expected for the project for the next 12 months after the date of the report; the major applications and uses on the supercomputer in the time since the last report; and, the major projected applications and uses on the supercomputer in the next six months after the date of the report. The report shall constitute a full management and status report on the supercomputer project.

(b) The Board of Directors of MCNC shall be the governing body for the supercomputer program.

(c) If MCNC specifies a Technical Advisory Council to provide to the supercomputer project, among other things:

(1) Technical policy and operating procedure advice.

- (2) Advice concerning use of the supercomputing facilities by educational institutions and other groups and individuals.
- (3) Advice and policy suggestions concerning the structures and operations of the supercomputing center and any adjunct institutes, conferences, or consultative committees, and
- (4) Advice and counsel to MCNC or anyone it employs or enters into contract with related to the operation of the supercomputer project.

that Technical Advisory Council shall have an equal number of members appointed from (i) public sector, academic, not-for-profit organizations and (ii) for-profit, private companies by July 31, 1991. The intent of the General Assembly is for one-half of the members of this Technical Advisory Council, or any group directly affiliated with the supercomputer project management group that performs the functions of the technical advisory council as listed in this section, to be current employees of private sector, for-profit corporations by July 31, 1991.

(d) It is the intent of the General Assembly that all appropriations to MCNC for all years after the 1990-91 fiscal year for the MCNC basic research program contain the proviso that the appropriated funds are matched on the basis of two non-State dollars (\$2.00) for every three State dollars (\$3.00).

(e) Beginning October 1, 1991, MCNC shall provide quarterly reports on all of its programs to the the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division. These reports shall include information on the activities and accomplishments during the past fiscal year, itemized expenditures during the past fiscal year with sources of funding, planned activities and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next 12 months.

(f) MCNC shall provide a report containing detailed budget information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests. Specific salary information will be provided upon written request by the Chairmen of the Joint Legislative Commission on Governmental Operations or the Chairmen of the House Appropriations Committee on Environment, Health, and Natural Resources and the Chairman of the Senate Appropriations Committee on Natural and Economic Resources.

Requested by: Representatives H. Hunter, Ethridge, DeVane, Senator Martin of Pitt

-----MCNC BUDGET LIMITS

Sec. 150.(a) The funds appropriated in this act to MCNC shall be used as follows:

	FY 1991-92	FY 1992-93
Microelectronics Program	\$ 6,194,302	\$ 6,000,000
Grants Program	-0-	-0-
Administration & Support	2,204,804	2,000,000
Supercomputer	5,298,063	5,224,705
Telecommunications	2,827,971	2,775,295

(b) Of the funds appropriated to MCNC for the Microelectronics Program, \$2,000,000 of the total appropriation in each fiscal year is contingent upon a dollar-for-dollar match in non-State funds.

(c) If MCNC finds it necessary to make changes in the program allocations specified in subsection (a) of this Section, MCNC shall report such changes to the Joint Legislative Commission on Governmental Operations within 30 days of the reallocation.

Requested by: Representatives Ethridge, H. Hunter, DeVane, Senator Martin of Pitt

-----RURAL ECONOMIC DEVELOPMENT CENTER

Sec. 151. (a) Of the funds appropriated in this Title to the Department of Economic and Community Development, \$1,500,000 for fiscal year 1991-92 and \$1,500,000 for fiscal year 1992-93 shall be used for a grant-in-aid to the Rural Economic Development Center, Inc., for the administrative costs of the Center and for its pilot projects and research. No more than \$300,000 of the funds appropriated for each fiscal year may be used for the administrative costs of the Rural Economic Development Center, Inc.

(b) Beginning October 1, 1991, the Rural Economic Development Center, Inc., shall provide quarterly reports on the Center's programs to the Joint Legislative Commission on Governmental Operations. The initial report shall include information on the activities and accomplishments during the past fiscal year, itemized expenditures during the past fiscal year with sources of funding, planned activities and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next 12 months. Subsequent reports shall include quarterly updates of the information in the initial report.

(c) The Rural Economic Development Center, Inc., shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management in the same

manner as State departments and agencies in preparation for biennium budget requests.

Requested by: Representatives Ethridge, H. Hunter, DeVane, Senator Martin of Pitt

-----RURAL ECONOMIC DEVELOPMENT CENTER FUND LIMITATIONS

Sec. 152. Not more than fifty percent (50%) of the interest earned on State funds appropriated to the Rural Economic Development Center, Inc., may be used by the Rural Economic Development Center, Inc., for administrative purposes, including salaries and fringe benefits.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----FEDERAL FUNDS ADMINISTRATION

Sec. 153. G.S. 143B-431 is amended by adding the following new subsection to read:

"(d) The Department of Economic and Community Development, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual and may comply with the terms, conditions, and limitations of such grants in order to accomplish the Department's purposes. Grant funds shall be expended pursuant to the Executive Budget Act. In addition, the Department shall have the following powers and duties with respect to its duties in administering federal programs:

(1) To negotiate, collect, and pay reasonable fees and charges regarding the making or servicing of grants, loans, or other evidences of indebtedness.

(2) To establish and revise by regulation, in accordance with Chapter 150B of the General Statutes, schedules of reasonable rates, fees, or charges for services rendered, including but not limited to, reasonable fees or charges for servicing applications. Schedules of rates, fees, or charges may vary according to classes of service, and different schedules may be adopted for public entities, nonprofit entities, private for-profit entities, and individuals."

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----EMPLOYMENT AND TRAINING PROGRAM

Sec. 154. Chapter 143B of the General Statutes is amended by adding the following new section to read:

"§ 143B-438.6. Employment and Training Grant Program.

(a) There is established in the Department of Economic and Community Development, Division of Employment and Training, an Employment and Training Grant Program. The purpose of the program is to make grants available to local agencies operating on behalf of the Private Industry Council serving Job Training Partnership Act service delivery areas. Grant funds shall be allocated for the purpose of enabling recipient agencies to implement local employment and training programs in accordance with existing resources, local needs, local goals, and selected training occupations. The Department shall adopt rules in accordance with Chapter 150B of the General Statutes for administering the Employment and Training Grant Program, which rules shall include procedures for review and approval of grant applications by local agencies and for monitoring use of grant funds by recipient agencies. A State-administered program of performance standards shall be used to measure grant program outcomes.

(b) Use of grant funds: Local agencies may use funds received under this section only for the purpose of upgrading the foundation of basic skills of the adult population and the existing work force in North Carolina. Services that may be provided include participant programs currently available under the federal Job Training Partnership Act that are appropriate for adults; on-the-job training; work experience; adult basic education; skills training, upgrading, and retraining; counseling and screening for job placement; service corps; and related support services. Local agencies may use grant funds to provide services only to individuals who are 18 years of age or older and who either (i) meet the current Federal Job Training Partnership Act definition of 'economically disadvantaged', or (ii) meet the current definition for eligibility under Title III of the Federal Job Training Partnership Act.

(c) Allocation of grants: The Department may reserve and allocate up to five percent (5%) of funds available to the Employment and Training Grant Program for State and local administrative costs to implement the program. The Division of Employment and Training shall allocate employment and training grants to local agencies operating on behalf of the Private Industry Council serving Job Training Partnership Act service delivery areas based on the following formula:

- (1) One half of the funds shall be allocated on the basis of the relative excess number of unemployed individuals residing in each county as compared to the total excess number of unemployed individuals in all counties in the State. 'Excess number of unemployed' is defined as the number of unemployed individuals in excess of four and one-half

percent (4.5%) of the civilian labor force in each county or the number of unemployed individuals in excess of four and one-half percent (4.5%) of the civilian labor force in each census tract within the county. The following methodology is used to determine the excess number of unemployed:

- a. For counties classified as having excess unemployment, the excess number of unemployed is determined by subtracting four and one-half percent (4.5%) of the civilian labor force from the number of unemployed individuals within the county. The difference equals the number of excess unemployed.
 - b. In situations where the entire county is not classified as having excess unemployment, the excess number of unemployed is determined by census tract unemployment within the county. Census tract data is used to determine which subcounty areas qualify as areas of excess unemployment. In those subcounty areas classified as having excess unemployment (census tracts with four and one-half percent (4.5%) or higher unemployment rates), four and one-half percent (4.5%) of the census tract labor force is subtracted from the number of unemployed individuals within the area of excess unemployment. The subcounty figures of excess number of unemployed within the county are then added together to determine the total excess number of unemployed within the county.
- (2) One half of the funds shall be allocated on the basis of the relative number of economically disadvantaged individuals within each county compared to the total number of economically disadvantaged individuals in the State. To determine the number of economically disadvantaged individuals within each county, data from the State Data Center in the Office of State Budget and Management, or from the federal decennial census, whichever is most recent, shall be used.
- (d) Reports, Coordination: The Department of Economic and Community Development shall report quarterly to the Governor and to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on the North Carolina Employment and Training Grant Program. The Department shall also provide a copy of these quarterly reports to the State Job Training Coordinating Council. The Council shall advise the Department on the merger of the funds provided to implement this section with other employment

and training funds to develop comprehensive work-force preparedness initiatives for the State.

(e) Funds appropriated to the Department of Economic and Community Development for the Employment and Training Grant Program that are not expended at the end of the fiscal year shall not revert but shall remain available to the Department for the purposes established in this section."

Requested by: Representatives H. Hunter, Ethridge, DeVane,
Senator Martin of Pitt

-----FIRST FLIGHT SYSTEM

Sec. 154.1. (a) G.S. 143B-471.3A reads as rewritten:

" § 143B-471.3A. Powers.

In order to enable it to carry out the purposes of this Part, the Authority may:

- (1) Exercise the powers granted corporations under G.S. 55-17;
- (2) Employ an executive director, whose salary shall be set by the General Assembly in the Current Operations Appropriations Act. The Authority may employ such other professional staff and clerical and secretarial staff as it deems necessary within the funds available to it. The salaries of such other personnel shall be set under the State Personnel Act;
- (3) Establish an office for the transaction of its business at Raleigh;
- (4) Apply for and accept grants of money from the State of North Carolina, or any political subdivision thereof, from the United States, or from any person, corporation, foundation, trust, or business or from any foreign government for any of the purposes authorized by this Part;
- (5) Establish and administer the incubator facilities program;
- (6) Administer the North Carolina Innovation Research Fund;
and
- (7) Adopt reasonable rules to effectuate the purposes of this **Part, Part;** and
- (8) Establish and administer the First Flight System, a network of business incubators across the State to transfer technologies into commercial applications by private industry."

(b) The North Carolina Biotechnology Center shall allocate, from funds appropriated to it in this Title, \$75,000 for the 1991-92 fiscal year and \$75,000 for the 1992-93 fiscal year to the North Carolina Technological Development Authority to implement and administer the First Flight System.

(c) MCNC shall allocate, from funds appropriated to it in this Title, \$75,000 for the 1991-92 fiscal year and \$75,000 for the 1992-93 fiscal year to the North Carolina Technological Development Authority to implement and administer the First Flight System.

(d) The North Carolina Technological Development Authority shall enter into a memorandum of understanding with the North Carolina Biotechnology Center and with MCNC that establishes the North Carolina Biotechnology Center and MCNC as sponsors of the First Flight System.

(e) Effective September 1, 1991, the statutory unexpended balances of appropriations, allocations, or other funds and all assets of the Technological Development Authority created in G.S. 143B-471 shall be transferred to the North Carolina Technological Development Authority, Inc., a private, nonprofit corporation. The North Carolina Technological Development Authority, Inc., shall use the funds and other assets transferred to it pursuant to this act for (i) an incubator facilities program, (ii) an innovation research fund, and (iii) the First Flight System, a network of incubators across the State to transfer technologies into commercial applications. The incubator facilities program shall be administered in accordance with the provisions of former G.S. 143B-471.4, repealed by this section. The innovation research fund shall be administered in accordance with the provisions of former G.S. 143B-471.5, repealed by this section.

(f) Effective September 1, 1991, Part 12 of Article 10 of Chapter 143B of the General Statutes is repealed.

(g) Effective September 1, 1991:

- (1) The below described land and improvements, formerly known as the "Science and Technology Research Center", together with property installed in the building and other movable equipment and supplies shall be transferred by the State of North Carolina to The North Carolina Technological Development Authority, Inc.: BEGINNING at an iron pin located at North Carolina Grid Coordinate, north 783,348.879 east 2,041,863.310; runs thence South 9 degrees 17 minutes West 261.50 feet to an iron pin; runs thence North 67 degrees 54 minutes West 698 feet to an iron pipe; runs thence North 37 degrees 50 minutes East 48.50 feet to an iron pin; runs thence North 45 degrees 50 minutes East 340.00 feet to an iron pin; runs thence North 13 degrees 18 minutes East 345.72 feet to an iron pin in the southern line of Cornwallis Road; runs thence along the southern line of Cornwallis Road along a slight curve having a diameter of 4 degrees 00 minutes, a tangent of 411.55 feet to a radius of 1,432.69 feet a distance of 363.82 feet to an

iron pin located in the southern line of Cornwallis Road; thence continuing along the southern line of Cornwallis Road South 65 degrees 52 minutes East 63.47 feet to a concrete monument; thence along the right of way of Cornwallis Road and Davis Drive South 26 degrees 42 minutes East 72.60 feet to a concrete monument; thence along the western line of the right of way of Davis Drive along a slight curve having a diameter of 1 degree 00 minutes a tangent of 351.27 feet and a radius of 5,730.34 feet a distance of 342.05 feet to an iron pin at the point and place of BEGINNING and containing 8 acres according to a deed recorded in the Office of the Register of Deeds of Durham County, North Carolina, in Book 30, pages 378-380.

- (2) The transfer made by this section shall be evidenced by a deed executed under G.S. 146-75 and registered in accordance with G.S. 146-77. The deed shall provide that the property transferred by this section shall automatically revert to the State of North Carolina if the property is used for any purposes other than the purposes set forth in subdivision (3).
- (3) The transfer made by this section is made on the condition that the North Carolina Technological Development Authority, Inc., shall use the property described in subdivision (1) solely as a business incubator serving technology research-based entrepreneurial companies in the Research Triangle Park. If the North Carolina Technological Development Authority, Inc., ceases to use the property for the purposes described in this section, then the property shall automatically revert to the State of North Carolina.

(h) Subsections (e), (f), and (g) of this section become effective September 1, 1991. The remainder of this section becomes effective July 1, 1991.

PART 25.-----DEPARTMENT OF LABOR

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----FUNDING FOR OSHA ENFORCEMENT POSITIONS

Sec. 155. The Department of Labor may use funds appropriated to the Department of Labor for the Occupational Safety and Health Act of North Carolina (OSHANC) program to fully fund enforcement personnel in the Compliance Bureau of the OSHANC program.

provided the Department of Labor certifies to the Office of State Budget and Management that no federal match is available for the 1991-92 fiscal year and for the 1992-93 fiscal year.

PART 26.-----DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----REDUCTION IN ADMINISTRATIVE SERVICES

Sec. 156. The Department of Environment, Health, and Natural Resources shall consider abolishing positions in each of the following administrative services areas:

- (1) Computer Systems,
- (2) Fiscal Management,
- (3) Office of the General Counsel,
- (4) General Services,
- (5) Personnel, and
- (6) Planning & Assessment

in order to reduce the budget of administrative services by the sum of \$200,000 for the 1991-92 fiscal year and by the sum of \$400,000 for the 1992-93 fiscal year.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----SEPTAGE MANAGEMENT FEES

Sec. 157. Receipts collected by the Department of Environment, Health, and Natural Resources pursuant to G.S. 130A-291.1 are appropriated to the Department to establish and operate the North Carolina Septage Management Program.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----AUTHORIZE USE OF WATER QUALITY FEES

Sec. 158. There is appropriated from the nonreverting account established in G.S. 143-215.3A to the Department of Environment, Health, and Natural Resources a sum not to exceed \$2,124,142 for the 1991-92 fiscal year and a sum not to exceed \$2,148,017 for the 1992-93 fiscal year for the salaries and the necessary support for up to 49 positions for the 1991-92 fiscal year and the 1992-93 fiscal year in the water quality program. Water quality fees shall be the only source of funds for these positions and all necessary support. These positions shall be used to reduce the backlog of permit applications and to

improve the rate of compliance of facilities with environmental standards for toxic substances.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----AUTHORIZE USE OF AIR QUALITY FEES

Sec. 159. There is appropriated from the nonreverting account established in G.S. 143-215.3A to the Department of Environment, Health, and Natural Resources a sum not to exceed \$1,193,340 for the 1991-92 fiscal year and a sum not to exceed \$1,487,506 for the 1992-93 fiscal year for the salaries and the necessary support:

(1) For up to 24 positions for the 1991-92 fiscal year; and

(2) For up to 29 positions for the 1992-93 fiscal year

in the air quality program. Air quality fees shall be the only source of funds for these positions and all necessary support. These positions shall be used to conduct air quality permitting, compliance, and monitoring activities.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----SUPERFUND PROGRAM

Sec. 160. (a) The Department of Environment, Health, and Natural Resources may use available funds, with the approval of the Office of State Budget and Management, in order to provide the ten percent (10%) cost share required for Superfund cleanups on National Priority List sites. These funds may be in addition to those appropriated for this purpose.

(b) The Department of Environment, Health, and Natural Resources and the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations the amount and the source of the funds used pursuant to subsection (a) of this section within 30 days of the expenditure of these funds.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----FOREST DEVELOPMENT ACT FUNDS

Sec. 161. Notwithstanding the provisions of G.S. 113A-192, the assessment from the primary forest product processors shall be collected for the 1991-92 fiscal year and the 1992-93 fiscal year. Notwithstanding the provisions of G.S. 113A-180 and G.S. 113A-183(c), all funds accrued to the Forest Development Fund, from whatever source, may be expended pursuant to the provisions of G.S. 113A-193(c) and Article 11 of Chapter 113A of the General Statutes for the 1991-92 fiscal year and the 1992-93 fiscal year.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----STUDY TERMINATING LEASE WITH FEDERAL GOVERNMENT

Sec. 162. The Parks and Recreation Division, Department of Environment, Health, and Natural Resources, shall study the desirability and the feasibility of terminating any long-term lease that the State entered into, whereby the State leases federal reservoirs. The Department shall report its findings and recommendations to the 1991 General Assembly (1992 Regular Session) no later than April 1, 1992.

Requested by: Representatives H. Hunter, Ethridge, DeVane, Senator Martin of Pitt

-----REVISION OF PARKS FEE SCHEDULE

Sec. 163. The Parks and Recreation Division, Department of Environment, Health, and Natural Resources, may adopt a temporary rule to increase the fee authorized by G.S. 113-35(b), to become effective July 24, 1991.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----TECHNICAL REVIEW COMMITTEE APPOINTMENTS

Sec. 164. The Soil and Water Conservation Commission shall include the Executive Director of the Wildlife Resources Commission, or his designee, and the Director of the Marine Fisheries Division of the Department of Environment, Health, and Natural Resources, or his designee, among its appointments to the Technical Review Committee, which reviews the technical specifications for the best management practices specified for the Agricultural Cost Share Program for Nonpoint Source Pollution Control.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----AGRICULTURE COST SHARE PROGRAM

Sec. 165. Of the funds appropriated in this Title to the Department of Environment, Health, and Natural Resources for the Agriculture Cost Share Program for Nonpoint Source Pollution Control, a sum not to exceed \$40,000 for the 1991-92 fiscal year and a sum not to exceed \$40,000 for the 1992-93 fiscal year shall be used to fund tide gates in Hyde County in accordance with the match requirements specified in G.S. 143-215.74(b)(6).

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----AUDITS OF SOIL AND WATER DISTRICT BOARDS

Sec. 166. G.S. 139-7 reads as rewritten:

" § 139-7. *District board of supervisors -- appointive members: organization of board; certain powers and duties.*

The governing body of a soil and water conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the Soil and Water Conservation Commission pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the board of supervisors of each county shall on or before October 31, 1978, and on or before October 31 as the terms of the appointive supervisors expire, recommend in writing two persons from the district to the Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the office shall be deemed vacant on the date the term is set to expire and the Commission shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The Commission shall make its appointments prior to or at the November meeting of the Commission. Appointive supervisors shall take office on the first Monday in December following their appointment. Such appointive supervisors shall serve for a term of four years, and thereafter, as their terms expire, their successors shall serve for a term of four years. The terms of office of all appointive supervisors who have heretofore been lawfully appointed for terms the final year of which presently extends beyond the first Monday in December are hereby terminated on the first Monday in December of the final year of appointment. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the appointment of a person by the Commission from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the Commission of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the Commission may, but is not ~~required to~~ required to, appoint two persons from the district without recommendation from the board of supervisors, to serve as district supervisors along with the elected members of the board of supervisors. Such appointments shall be made at the same time other appointments are made under this section, and the persons appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall

constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G.S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the Department of Environment, Health, and Natural Resources.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the Department, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. In any given year, if the supervisors provide for an internal audit, and the supervisor serving as chairman certifies, under oath, that this internal audit is a true and accurate reflection of the accounts of receipts and disbursements, then the supervisors shall not be required, notwithstanding the provisions of G.S. 159-34, to provide for an audit of the accounts of receipts and disbursements by a certified public accountant or by an accountant certified by the Local Government Commission. Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to

designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948."

Requested by: Representatives Ethridge, H. Hunter. Senator Martin of Pitt

-----INTEREST ON WILDLIFE RESOURCES FUND/PRESERVE
FEDERAL FUNDING

Sec. 167. (a) G.S. 143-250 reads as rewritten:

" § 143-250. *Wildlife Resources Fund.*

All moneys in the game and fish fund or any similar State fund when this Article becomes effective shall be credited forthwith to a special fund in the office of the State Treasurer, and the State Treasurer shall deposit all such moneys in said special fund, which shall be known as the Wildlife Resources Fund.

All unexpended appropriations made to the Department of Conservation and Development, the Board of Conservation and Development, the Division of Game and Inland Fisheries or to any other State agency for any purpose pertaining to wildlife and wildlife resources shall also be transferred to the Wildlife Resources Fund.

Except as otherwise specifically provided by law, all moneys derived from hunting, fishing, trapping, and related license fees, exclusive of commercial fishing license fees, including the income received and accruing from the investment of license revenues, and all funds thereafter received from whatever sources shall be deposited to the credit of the Wildlife Resources Fund and made available to the Commission until expended subject to the provisions of this Article. License revenues include the proceeds from the sale of hunting, fishing, trapping, and related licenses, from the sale, lease, rental, or other granting of rights to real or personal property acquired or produced with license revenues, and from federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is being made. For purposes of this section, real property includes lands, buildings, minerals, energy resources, timber, grazing rights, and animal products. Personal property includes equipment, vehicles, machines, tools, and

annual crops. The Wildlife Resources Fund herein created shall be subject to the provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes of North Carolina as amended, and the provisions of the General Statutes of North Carolina as amended, and the provisions of the Personnel Act, Chapter 143, Article 2 of the General Statutes of North Carolina as amended.

All moneys credited to the Wildlife Resources Fund shall be made available to carry out the intent and purposes of this Article in accordance with plans approved by the North Carolina Wildlife Resources Commission, and all such funds are hereby appropriated, reserved, set aside and made available until expended, for the enforcement and administration of this Article, Chapter 75A, Article 1, and Chapter 113, Subchapter IV of the General Statutes of North Carolina. The Wildlife Resources Commission shall report to the Joint Legislative Commission on Governmental Operations before expending from the Wildlife Resources Fund more than the amount authorized in the budget enacted by the General Assembly for the fiscal period.

In the event any uncertainty should arise as to the funds to be turned over to the North Carolina Wildlife Resources Commission the Governor shall have full power and authority to determine the matter and his recommendation shall be final and binding to all parties concerned."

(b) This section becomes effective January 1, 1992.

Requested by: Representatives H. Hunter, Ethridge, DeVane, Michaux, Senator Martin of Pitt

-----CONTINUE PUBLIC DENTAL HEALTH PROGRAM
EMPHASIS

Sec. 169. From the funds appropriated to the Department of Environment, Health, and Natural Resources in this act for Dental Health Services, the Department shall administer the public dental health program, the primary emphasis of which shall continue to be the delivery of preventive, educational, and dental care services to preschool children and school-age children.

Requested by: Representatives H. Hunter, Ethridge, DeVane, Diamont, Senator Martin of Pitt

-----MATERNAL AND CHILD HEALTH CARE NON-SUPPLANTING REQUIREMENT

Sec. 170. Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-4.1. State Funds for Maternal and Child Health Care/non-supplanting.

(a) The Department of Environment, Health, and Natural Resources shall ensure that local health departments do not reduce county appropriations for maternal and child health services provided by the local health departments because they have received State appropriations for this purpose.

(b) All income earned by local health departments for maternal and child health programs supported in whole or in part from State or federal funds, received from the Department of Environment, Health, and Natural Resources, shall be budgeted and expended by local health departments to further the objectives of the program that generated the income."

Requested by: Representatives H. Hunter, Ethridge, DeVane,
Diamont, Senator Martin of Pitt

-----HEALTH PROMOTION NON-SUPPLANTING
REQUIREMENT

Sec. 171. Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-4.2. State Funds for Health Promotion/non-supplanting.

The Department of Environment, Health, and Natural Resources shall ensure that local health departments do not reduce county appropriations for health promotion services provided by the local health departments because they have received State appropriations for this purpose."

Requested by: Representatives Ethridge, H. Hunter, Senator Martin
of Pitt

-----NON-MEDICAID REIMBURSEMENT

Sec. 172. Providers of medical services under the various State programs other than Medicaid offering medical care to citizens of the State shall be reimbursed at rates no more than those under the North Carolina Medical Assistance Program.

The Department of Environment, Health, and Natural Resources may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of paragraph one of this section, the Department of Environment, Health, and Natural Resources may negotiate with providers of medical services under the various Environment, Health, and Natural Resources programs, other than Medicaid, for rates as close as possible to Medicaid rates for the

following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents and clients who require such services which cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs with the exception of Migrant Health, School Health, AIDS Drug Reimbursement Program, diagnostic assessment for infants with sickle cell syndrome, and Home Health shall be as follows:

Family Size	Kidney	All Other
1	\$ 6.400	\$ 4.200
2	8.000	5.300
3	9.600	6.400
4	11.000	7.500
5	12.000	7.900
6	12.800	8.300
7	13.600	8.800
8	14.400	9.300

The eligibility level each fiscal year for outpatient services for all clients and for inpatient services for children under the age of 5, in the Children's Special Health Services Program shall be one hundred percent (100%) of the federal poverty guidelines as revised annually by the United States Department of Health and Human Services, in effect on July 1 of each fiscal year.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----ASBESTOS HAZARD MANAGEMENT FUNDS

Sec. 173. The fees established and collected pursuant to Article 19 of Chapter 130A of the General Statutes are appropriated to the Department of Environment, Health, and Natural Resources to support the Asbestos Hazard Management Program.

Requested by: Representatives Ethridge, H. Hunter, DeVane, Senator Martin of Pitt

-----ADOLESCENT PREGNANCY PREVENTION PROJECTS

Sec. 174. (a) Of the funds appropriated in this Title to the Division of Maternal and Child Health, Department of Environment, Health, and Natural Resources, \$982,768 for the 1991-92 fiscal year and \$982,768 for the 1992-93 fiscal year shall be used to fund adolescent pregnancy prevention projects.

(b) Beginning in fiscal year 1991-92, the Division shall evaluate all of the adolescent pregnancy projects funded as a result of this program at least yearly and shall report its findings to the Commission for Health Services, the Joint Legislative Commission on Governmental Operations, and the Chairmen of the House Appropriations Committee on Environment, Health, and Natural Resources, and the Senate Appropriations Committee on Natural and Economic Resources by April 1 of each year. The evaluation shall be conducted by a firm or individual external to the Department. Funds appropriated to the Department in Section 3 of this act for employing a Public Health Program Consultant in the Division of Maternal and Child Health shall be used by the Department to retain the services of the evaluator required by this subsection. Any evaluation of these projects shall include a study of the effectiveness of the project in reducing the pregnancy rate within the target population.

(c) The Commission for Health Services shall be responsible for monitoring the Division's administration of the Adolescent Pregnancy Prevention Program. The Division shall implement the following changes in the management and funding of the Adolescent Pregnancy Prevention Program for projects funded from General Fund appropriations and federal block grants:

- (1) Applications. Any local agency or organization or combination of agencies and organizations may apply to the Division of Maternal and Child Health for an allocation of money to operate a project aimed at preventing adolescent pregnancy. The application shall contain an analysis of the adolescent pregnancy and related problems in the locality the project would serve, and a description of how the project would attempt, over a period of at least five years, to prevent the problems. The application shall state how much money is needed to operate the project and how the money shall be spent. The Division shall conduct annually a proposal-writing session that shall be attended by a representative of any project that wishes to apply for funding; that session shall define the criteria for accountability and evaluation that the Division requires of projects. That session shall also provide information about additional funding sources to which projects might turn to satisfy the matching requirements of subdivision (5) of this subsection.
- (2) Proposal Requirements. The Division shall apply the following minimum standards to projects applying for first-year funding:
 - a. Each project shall have a plan of action that extends for at least five years for prevention of adolescent pregnancy.

- b. Each project shall have realistic, specific, and measurable goals and objectives for the prevention of adolescent pregnancy.
 - c. Each project, before submitting its proposal, shall send a representative to the proposal-writing session held by the Division.
- (3) Operating standards. The Division shall apply the following minimum operating standards:
- a. Each project shall have a Board of Advisors composed of members from outside the sponsoring agency of the project. The Board of Advisors shall include representatives from at least four of the following: media, government, charitable organizations, private business, medical institutions. The Boards of Advisors shall meet at least quarterly and advise project staff on project policies and operations.
 - b. Each project shall comply with reporting, contracting, and evaluation requirements of the Division.
 - c. Each project shall define and maintain cooperative ties with other community institutions.
 - d. Each project shall demonstrate its ability to attract financial support from sources other than the State, including sources in the local community.
- (4) Criteria for Selection. For first-year funding, the Division shall choose from among the applicants that meet the minimum standards in subdivision (2) of this subsection the best selection of projects according to the following criteria:
- a. Adequacy of proposed staff to meet project objectives;
 - b. Appropriateness of project strategies to reduce adolescent pregnancy;
 - c. Level of community support, including endorsement from the appropriate local government entity and documentation from the appropriate local government entity and from community organizations that opportunity has been given for citizen input into the proposed program, and that there is community support for the proposal. Documentation may include letters or statements of support from citizens or community organizations, or statements that community support was expressed at public hearings. A public hearing is not required by this paragraph;
 - d. Degree of need of the locality, including that the county has a significant adolescent pregnancy problem as

evidenced by its attributable risk score developed by the Division of Statistics and Information Services; and

e. Other appropriate criteria.

The Division shall make its recommendations for funding to the Commission for Health Services. The Commission shall make the final determination of which projects are to be funded. The Commission shall consider the recommendations of the Division but shall not be bound by them. The Commission shall notify the projects that are to be funded by June 1 of each year.

- (5) Schedule of Funding. If the Commission, upon consultation with the Division, finds that a project it has chosen for first-year funding continues to meet the operating standards of subdivisions (2) and (3) of this subsection, funding for that project shall continue, to the extent of available money, for an additional four years. The level of funding provided by the Division to approved projects shall be set according to the following schedule:
- a. First year, eighty percent (80%) of the project's annual budget not to exceed the maximum award established by the Commission for Health Services,
 - b. Second year, ninety percent (90%) of the State appropriations or federal block grant funds awarded in the first year,
 - c. Third year, seventy-five percent (75%) of the State appropriations or federal block grant funds awarded in the first year,
 - d. Fourth year, sixty-five percent (65%) of the State appropriations or federal block grant funds awarded in the first year, and
 - e. Fifth year, fifty percent (50%) of the State appropriations or federal block grant funds awarded in the first year.

The portion of a project's budget that must come from sources other than State or federal block grant funds may be provided as in-kind contributions as well as cash.

- (6) Five-Year Limit on Funding. No project shall receive State funding if it has previously received State funding for five full years. Any project that has received State funding before July 1, 1990 will be eligible for consideration for an additional five years' State support, according to the schedule. The Commission may fund any such project that meets the minimum standards if it determines, after considering the experience and impact of the project and

measuring its application against those of other applicants, that it should be funded.

- (7) **Maximum Level of Funding.** The Commission for Health Services shall by rule determine the maximum annual amount that may be made to any one project.
- (8) As adolescent pregnancy prevention project grant funds decrease, a project shall maintain its original budget level, less the amount expended for start-up costs. The Department shall develop guidelines for determining start-up costs, which guidelines shall be uniform for all projects. Local match percentage may come from any in-kind source or newly generated funds, public or private, available to the project.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----INFECTION CONTROL PROGRAM/FUNDS TRANSFER

Sec. 175. Of the funds appropriated to the Department of Environment, Health, and Natural Resources, Division of Epidemiology, for the 1991-93 biennium, \$85,274 shall be transferred in each fiscal year to the University of North Carolina at Chapel Hill for the School of Medicine of the University of North Carolina at Chapel Hill. Funds transferred pursuant to this section shall be used to support the Health Care Facilities Infection Control Program in investigating and controlling nosocomial infections in hospitals, long-term care facilities, and other medical facilities in cooperation with the Division of Epidemiology. Funds transferred shall also be used to provide training and consultation to hospitals, long-term care facilities, and other medical facilities to prevent and control nosocomial infections.

Requested by: Representatives H. Hunter, Ethridge, DeVane, Senator Martin of Pitt

-----PHARMACEUTICAL FUNDS/SEXUALLY TRANSMITTED DISEASE CONTROL PROGRAM

Sec. 175.1. Funds appropriated in this Title to the Department of Environment, Health, and Natural Resources, Division of Epidemiology, for the Tuberculosis Control Hospitalization Program, may be used for pharmaceuticals for the Sexually Transmitted Disease Control Program.

Requested by: Representatives H. Hunter, Ethridge, DeVane, James, Senator Martin of Pitt

-----SOIL AND WATER CONSERVATION DISTRICT SUPERVISORS' EXPENSES

Sec. 176. Of the funds appropriated in this Title to the Division of Soil and Water Conservation, Department of Environment, Health, and Natural Resources, \$214,594 for the 1991-92 fiscal year and \$214,594 for the 1992-93 fiscal year shall be used for the per diem and travel expenses of the Soil and Water Conservation District Supervisors.

Requested by: Representatives H. Hunter, Ethridge, DeVane, Gottovi, Senator Martin of Pitt

-----CHILDREN'S SPECIAL HEALTH SERVICES/REFUNDS

Sec. 178. (a) The Office of State Budget and Management shall carry forward all funds allotted in the 1990-91 fiscal year and the 1991-92 fiscal year for the Children's Special Health Services Program to the 1991-92 fiscal year and the 1992-93 fiscal year, respectively, in the Division of Maternal and Child Health, Department of Environment, Health, and Natural Resources.

(b) The Office of State Budget and Management shall allow the Department of Environment, Health, and Natural Resources to budget and expend refunds of the prior year's expenditures for the purchase of care by the Children's Special Health Services Program for the same purpose in the fiscal year in which the refund is received.

(c) Subsection (a) of this section becomes effective June 30, 1991.

Requested by: Representatives Ethridge, H. Hunter, DeVane, Senator Martin of Pitt

-----PUBLIC HEALTH PROGRAM FEES/EXEMPTION FOR ELDERLY

Sec. 179. G.S. 130A-248(d) reads as rewritten:

"(d) (Expires June 30, 1992) The Department shall charge each facility subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Human Resources and public school cafeterias, an annual fee of twenty-five dollars (\$25.00). The Department shall charge an additional twenty-five dollar (\$25.00) late payment fee to any facility that fails to pay the required fee within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend or revoke the permit of a facility that fails to pay the required fee within 60 days after billing by the Department. The Commission shall adopt rules to implement this subsection. Fees collected under this

subsection shall be credited to the General Fund and may be used to support State and local public health programs and activities. The Department shall make an annual report to the Joint Legislative Commission on Governmental Operations and the Director of the Fiscal Research Division that shall include the fees collected and disbursed under this subsection and any other information requested by the General Assembly or the Commission."

Requested by: Representatives H. Hunter, Ethridge, DeVane, Redwine, Senator Martin of Pitt

-----TRANSFER LAND RECORDS MANAGEMENT

Sec. 181. (a) The statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, of the Department of Environment, Health, and Natural Resources to conduct the land records management program, as provided by G.S. 143-345.6, is transferred to the Department of the Secretary of State.

(b) G.S. 143-345.6 is recodified as G.S. 147-54.3.

(c) G.S. 143-345.6, as recodified as G.S. 147-54.3 by subsection (b) of this section, reads as rewritten:

" § 147-54.3. *Land records management program.*

(a) The ~~Department of Environment, Health, and Natural Resources~~ Secretary of State shall administer a land records management program for the purposes (i) of advising registers of deeds, local tax officials, and local planning officials about sound management practices, and (ii) of establishing greater uniformity in local land records systems. The management program shall consist of the activities provided for in subsections (b) through (e) of this section, and other related activities essential to the effective conduct of the management program.

(b) The ~~Department of Environment, Health, and Natural Resources~~ Secretary of State, in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall establish minimum standards and provide advice and technical assistance to local governments in implementing and maintaining minimum standards with regard to the following aspects of land records management:

- (1) Uniform indexing of land records;
- (2) Uniform recording and indexing procedures for maps, plats and condominiums; and
- (3) Security and reproduction of land records.

(c) The ~~Department of Environment, Health, and Natural Resources~~ Secretary of State shall conduct a program for the preparation of

county base maps pursuant to standards prepared by ~~that Department,~~
~~the Secretary.~~

(c1) ~~The Department of Environment, Health, and Natural Resources, Secretary of State,~~ shall, in cooperation with the Secretary of Revenue, conduct a program for the preparation of county cadastral maps pursuant to standards prepared by the ~~Department of Environment, Health, and Natural Resources, Secretary of State.~~

(d) Upon the joint request of any board of county commissioners and the register of deeds and subject to available resources of personnel and funds, the Secretary shall make a management study of the office of register of deeds, using assistance from the Office of State Personnel. At the conclusion of the study, the Secretary shall make nonbinding recommendations to the board, the register of deeds, and to the General Assembly.

(d1) ~~The Department of Environment, Health, and Natural Resources~~ Secretary of State shall make comparative salary studies periodically of all registers of deeds offices and at the conclusion of each study the Secretary of ~~Environment, Health, and Natural Resources~~ State shall present his written findings and shall make recommendations to the board of county commissioners and register of deeds of each county.

(e) ~~The Department of Environment, Health, and Natural Resources, Secretary of State,~~ in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall undertake research and provide advice and technical assistance to local governments on the following aspects of land records management:

- (1) Centralized recording systems;
- (2) Filming, filing, and recording techniques and equipment;
- (3) Computerized land records systems; and
- (4) Storage and retrieval of land records.

(f) An advisory committee on land records is created to assist the Secretary in administering the land records management program. The Governor shall appoint 12 members to the committee: one member shall be appointed from each of the organizations listed below from persons nominated by the organization:

- (1) The North Carolina Association of Assessing Officers;
- (2) The North Carolina Section of the American Society of Photogrammetry;
- (3) The North Carolina Chapter of the American Institute of Planners;
- (4) The North Carolina Section of the American Society of Civil Engineers;
- (5) The North Carolina Tax Collectors' Association;

- (6) The North Carolina Association of Registers of Deeds;
- (7) The North Carolina Bar Association;
- (8) The North Carolina Society of Land Surveyors; and
- (9) The North Carolina Association of County Commissioners.

In addition, three members from the public at large shall be appointed. The members of the committee shall be appointed for four-year terms, except that the initial terms for members listed in positions (1) through (4) above and for two of the members-at-large shall be two years; thereafter all appointments shall be for four years. The Governor shall appoint the chairman, and the committee shall meet at the call of the chairman. The Governor in making the appointments shall try to achieve geographical and population balance on the advisory committee: one third of the appointments shall be persons from the most populous counties in the State containing approximately one third of the State's population, one third from the least populous counties containing approximately one third of the State's population, and one third shall be from the remaining moderately populous counties containing approximately one third of the State's population. Each organization shall nominate one nominee each from the more populous, moderately populous, and less populous counties of the State. The members of the committee shall receive per diem and subsistence and travel allowances as provided in G.S. 138-5."

- (d) This section is effective upon ratification.

TITLE II. - EXPANSION

PART 27.-----CURRENT OPERATIONS/GENERAL FUND

Sec. 182. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the biennium ending June 30, 1993, according to the following schedule:

<u>Current Operations-General Fund</u>	<u>1991-92</u>	<u>1992-93</u>
Judicial Department	\$ 1,197,262	\$ 197,262
Department of Public Education	25,346,040	60,045,414
Department of Justice	229,627	229,627

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Department of Administration		
01. Administration	624,395	606,507
02. State Controller	1,037,280	1,037,280
Department of Agriculture	205,000	205,000
Department of Insurance	964,893	925,349
Department of Environment, Health, and Natural Resources	5,502,794	9,404,319
Office of Administrative Hearings	619,776	1,907,437
Department of Human Resources		
01. DHR - Secretary	123,892	123,892
02. Social Services	17,528,708	19,723,832
03. Social Services - State Aid to Non-State Agencies	645,960	-
04. Medical Assistance	57,993,075	66,973,005
05. School for the Deaf and Hard of Hearing	300,000	577,151
06. Division of Services for the Blind	541,865	944,910
07. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	15,368,898	22,196,460
08. Division of Youth Services	900,000	960,000
Total Department of Human Resources	93,402,398	111,499,250
Department of Correction	-	10,764,288
Department of Economic and Community Development	150,461	393,989
Rural Economic Development Center	3,100,000	-
Department of Cultural Resources	70,145	70,145
Department of Crime Control and Public Safety	165,000	-

University of North Carolina - Board
of Governors

01. University Institutional Program	8,389,400	10,989,400
State Board of Elections	8,200	-
Department of Community Colleges	10,955,044	10,955,044
Reserve - Economic Development	750,000	-
Savings Reserve Account	400.00	-
Debt Service	<u>3,655,500</u>	<u>15,970,900</u>
GRAND TOTAL CURRENT OPERATIONS -- GENERAL FUND	\$156,773,215	\$235,201,211

PART 28.-----CURRENT OPERATIONS/HIGHWAY FUND

Sec. 183. Appropriations from the Highway Fund of the State for the maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the biennium ending June 30, 1993, according to the following schedule:

<u>Current Operations-Highway Fund</u>	<u>1991-92</u>	<u>1992-93</u>
Department of Transportation		
01. Administration	\$ 552,800	\$ 55,440
02. Division of Highways		
a. Administration and Operations	153,657	228,974
b. State Maintenance		
(01) Primary	7,769,712	5,160,874
(02) Secondary	13,655,855	9,070,626
(03) Urban	2,119,012	1,407,512
03. Division of Motor Vehicles	822,436	1,184,729
04. Reserve for Asphalt Cleanup	1,000,000	1,000,000
05. Reserve for Air Cargo Airport Authority	2,610,000	3,955,250

06. Transfer to General Fund for
reimbursement for sales tax
exemption

8,700,000

8,700,000

GRAND TOTAL CURRENT OPERATIONS--

HIGHWAY FUND

\$ 37,383,472 \$ 30,763,405

PART 29.-----GENERAL PROVISIONS

Requested by: Representative Gardner

-----STATE AGENCY MAILING LISTS PURGED

Sec. 184. (a) Each State agency, commission, institution, and university that maintains a mailing list comprising more than 200 addressees to whom free printed material is distributed through the postal service shall, no later than January 1, 1992, query each addressee to determine whether that addressee desires to remain on the mailing list. The agency, commission, institution, or university shall within one month thereafter purge the mailing list of each nonresponding addressee and each addressee who indicates a desire that the addressee's name be removed. Each State agency, commission, institution, and university shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by March 1, 1992, regarding its cost savings.

(b) Mailing lists that are required by law are exempt from this section.

PART 29.1.-----GENERAL GOVERNMENT PROVISIONS

Requested by: Senator Basnight

-----SEAFOOD & AQUACULTURE COMMISSION MEMBERSHIP

Sec. 184.1. G.S. 120-70.61 reads as rewritten:

" § 120-70.61. *Membership; cochairmen; vacancies; quorum.*

The Joint Legislative Commission on Seafood and Aquaculture shall consist of ~~eleven~~ 15 members: ~~three~~ four Senators appointed by the President Pro Tempore of the Senate; ~~three~~ four Representatives appointed by the Speaker of the House of Representatives; ~~three~~ four members appointed by the Governor; and ~~two~~ three members appointed by the Commissioner of Agriculture. The members shall serve at the pleasure of their appointing officer. The President Pro Tempore of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. Vacancies occurring on the Commission shall be filled in the same manner as

initial appointments. A quorum of the Commission shall consist of six ~~eight~~ members."

Requested by: Senator Lee

-----LRC STUDY OF TUITION AND ENROLLMENT AT THE UNC SYSTEM

Sec. 184.2. The Legislative Research Commission may study tuition, fees, and enrollment at The University of North Carolina. If the Commission conducts this study, it shall consider the following:

- (1) Comparison of tuition and fees at each of the constituent institutions for resident and nonresident students, with tuition charged for resident and nonresident students at comparable institutions in other states;
- (2) Feasibility of charging nonresident students at the constituent institutions a tuition rate comparable to that charged to nonresident students enrolled at comparable institutions in the nonresident students' home states;
- (3) Comparison of current tuition rates with the actual cost of educating students;
- (4) Number and percentage of resident and nonresident students enrolled at each constituent institution at the undergraduate and at the graduate levels of study; and
- (5) Any other issues related to charges for tuition and fees that the Commission deems appropriate.

If the Commission conducts the study authorized under this section, it may report its findings together with recommended legislation, to the 1992 Session of the 1991 General Assembly, or to the 1993 General Assembly, or to both.

PART 29.2.-----DEPARTMENT OF ADMINISTRATION

Requested by: Representatives Bowman, N.J. Crawford, Senator Martin of Guilford

-----CONTRACTED UNEMPLOYMENT INSURANCE CLAIMS

Sec. 184.3. Funds appropriated in Title II of this act to the Department of Administration, Office of State Personnel, shall be used for administrative operating costs related to contracted unemployment insurance claims administration services.

PART 29.3.-----OFFICE OF THE GOVERNOR

Requested by: Senators Basnight, Plyler

-----SAVINGS RESERVE ACCOUNT

Sec. 184.4. Notwithstanding any other provision of law, funds in the Savings Reserve Account shall not revert to the State Treasury at the end of each fiscal year but shall remain in the Savings Reserve Account and be carried forward for the next succeeding fiscal year, unless the funds are needed by the Governor to carry out his constitutional duty to balance the State budget.

PART 30.-----SALARIES AND BENEFITS

Requested by: Representatives Nesbitt, Diamont. Senators Basnight, Plyler

-----SALARIES/GOVERNMENT EMPLOYEES

Sec. 185. The salaries of those individuals whose annual salaries for the 1989-90 and 1990-91 fiscal years were set in Sections 23, 24, 25, 26, 27, 28, 30(a), 31, 32, and 39 of Chapter 752 of the 1989 Session Laws, are set for the 1991-92 and 1992-93 fiscal years at the level set in those sections for the 1990-91 fiscal year.

Requested by: Senator Basnight. Representative Nesbitt

-----TEACHER, STATE EMPLOYEE, AND OTHER EDUCATION PERSONNEL COMPENSATION

Sec. 186. The General Assembly recognizes the importance of implementing the third year of the teacher salary schedule; therefore, it is the intent of the General Assembly to complete implementation of a teacher salary schedule in the 1992-93 fiscal year and to place teachers on it according to years of experience if funds are available to do so. It is the intent of the General Assembly also to ensure that State employees, teachers, and other education personnel are treated equitably with respect to salary increases; therefore, to the extent that funds are available to do so, it is the intent of the General Assembly to grant salary increases to State employees, teachers, and other public school and University personnel in the 1992-93 fiscal year that are over and above salary levels funded for the 1991-92 fiscal year.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----STATE EMPLOYEE COST OF LIVING PRIORITY

Sec. 187. (a) It is the intent of the General Assembly that Cost of Living general pay increases be given priority over performance pay as the Governor and the General Assembly determine the appropriate

allocation of State employee salary increases relating to Cost of Living general pay adjustments and performance pay. To effect this intent, no performance pay shall be granted except in accordance with subsections (b), (c), (d), and (e) of this section, which ensure that Cost of Living general pay increases of at least two percent (2%) are allocated before any performance pay is allocated. It is also the intent of the General Assembly to acknowledge the need to adjust the determination of Cost of Living general pay increases so that all State employees, regardless of salary, are treated equitably. To effect that intent, the General Assembly may make any adjustment to the Cost of Living general salary increases allocated to State employees that it considers necessary to render the allocations truly equitable for all employees.

Nothing in this section affects the right of the General Assembly to allocate flat percentage Cost of Living general pay increases.

(b) G.S. 126-7(a) reads as rewritten:

"(a) It is the policy of the State to compensate its employees at a level sufficient to encourage excellence of performance and to maintain the labor market competitiveness necessary to recruit and retain a competent work force. To this end, salary increases to State employees ~~shall~~ may be based, in part, on each individual employee's job performance and, in part, on general increases given to all State employees."

(c) G.S. 126-7 is amended by adding a new subsection to read:

"(a1) General salary increases for State employees shall precede any consideration of a performance pay allocation. Performance pay shall be allocated only when the total allocation for increases equals or exceeds two percent (2%)."

(d) G.S. 126-7(b) reads as rewritten:

"(b) To guide the Governor and the General Assembly in making appropriations to further the compensation policy of the State, the State Personnel Commission shall conduct annual compensation surveys. ~~The Commission shall determine the percent of funds appropriated for salary increases to be reserved for a general increase for all State employees and the percent to be reserved for performance-based increases for eligible employees. The Commission shall present its recommendation on the percentages and the results of the compensation survey to the Appropriations Committees of the House and Senate no later than two weeks after the convening of the legislature in odd years and May 1st of even years. The amount reserved for performance increases shall not be less than twenty-five percent (25%) nor more than seventy-five percent (75%) of the total allocation.~~"

(e) G.S. 126-7(c), until the first subdivision, reads as rewritten:

"(c) Performance ~~increases~~ increases, if awarded, shall be based on performance appraisals of all employees conducted by each department, agency, and institution. The State Personnel Commission, under the authority of G.S.126-4(8), shall adopt policy and regulations for performance appraisal. The policy and regulations shall include the following:".

Requested by: Representatives Nesbitt, Diamont. Senators Basnight, Plyler

-----SALARY RELATED CONTRIBUTIONS/EMPLOYERS

Sec. 188. (a) Required employer salary-related contributions for employees whose salaries are paid from department, office, institution, or agency receipts shall be paid from the same source as the source of the employees' salary. If an employee's salary is paid in part from the General Fund or Highway Fund and in part from department, office, institution, or agency receipts, required employer salary-related contributions may be paid from the General Fund or Highway Fund only to the extent of the proportionate part paid from the General Fund or Highway Fund in support of the salary of the employee, and the remainder of the employer's requirements shall be paid from the source that supplies the remainder of the employee's salary. The requirements of this section as to source of payment are also applicable to payments on behalf of the employee for hospital-medical benefits, longevity pay, unemployment compensation, accumulated leave, workers' compensation, severance pay, separation allowances, and applicable disability income and disability salary continuation benefits.

(b) Effective July 1, 1991, the State's employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the 1991-92 fiscal year are (i) nine and sixty-three hundredths percent (9.63%) - Teachers and State Employees; (ii) fourteen and sixty-three hundredths percent (14.63%) - State Law Enforcement Officers; (iii) eight and sixty-six hundredths percent (8.66%) - University Employees' Optional Retirement Program; (iv) twenty-seven and twenty-two hundredths percent (27.22%) - Consolidated Judicial Retirement System; and (v) thirty-two and thirty hundredths percent (32.30%) - Legislative Retirement System. Each of the foregoing contribution rates includes two percent (2%) for hospital and medical benefits. The rate for State Law Enforcement Officers includes five percent (5%) for the Supplemental Retirement Income Plan. The rates for Teachers and State Employees, State Law Enforcement Officers, and for the University Employees' Optional Retirement Program include forty-two hundredths percent (0.42%) for the Disability Income Plan.

(c) Effective July 1, 1992, the State's employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the 1992-93 fiscal year are (i) ten and ninety-three hundredths percent (10.93%) - Teachers and State Employees; (ii) fifteen and ninety-three hundredths percent (15.93%) - State Law Enforcement Officers; (iii) eight and sixty-six hundredths percent (8.66%) - University Employees' Optional Retirement Program; (iv) twenty-nine and forty-six hundredths percent (29.46%) - Consolidated Judicial Retirement System; and (v) thirty-two and thirty hundredths percent (32.30%) - Legislative Retirement System. Each of the foregoing contribution rates includes two percent (2%) for hospital and medical benefits. The rate for State Law Enforcement Officers includes five percent (5%) for the Supplemental Retirement Income Plan. The rates for Teachers and State Employees, State Law Enforcement Officers, and for the University Employees' Optional Retirement Program includes forty-two hundredths percent (0.42%) for the Disability Income Plan.

(d) The maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 1991-92 fiscal year to the Teachers' and State Employees' Comprehensive Major Medical Plan are: (i) Medicare eligible employees and retirees - \$1,238; and (ii) Non-Medicare eligible employees and retirees - \$1,626.

(e) The maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 1992-93 fiscal year to the Teachers' and State Employees' Comprehensive Major Medical Plan are: (i) Medicare eligible employees and retirees - \$1,321; and (ii) Non-Medicare eligible employees and retirees - \$1,736.

PART 31.-----DEPARTMENT OF INSURANCE

Requested by: Representatives Bowman, N.J. Crawford, Diamont, Senator Martin of Guilford

-----INSURANCE STUDY OF HEALTH INSURANCE COVERAGE OF WOMEN NEEDING PRENATAL AND DELIVERY HEALTH SERVICES

Sec. 189. (a) The Department of Insurance, in conjunction with the Department of Environment, Health, and Natural Resources, Division of Maternal and Child Health, and the Department of Human Resources, Division of Medical Assistance, shall conduct a study to determine the extent to which there are women who lack health insurance covering prenatal and delivery services; and to determine the gaps in private and self-funded health insurance coverage. Not

later than March 1, 1992, the Department of Insurance shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on the progress of this study.

(b) Of the funds appropriated to the Department of Insurance in this act, \$40,000 is allocated for the study required by this act. The Department may contract for clerical or professional staff or any other services it requires in the course of this study.

Requested by: Representatives Bowman, N.J. Crawford, Senators Perdue, Martin of Guilford

-----MEDICAL DATABASE/DATA FROM ALL HEALTH CARE PROVIDERS

Sec. 189.1. (a) G.S. 131E-212(b) is amended by adding the following new subdivision to read:

"(9) The Commission shall implement plans for the submission of data from all health care providers beginning with the free-standing ambulatory surgery centers."

(b) The Medical Database Commission shall report its progress on expanding its database by June 1, 1992, to the General Assembly and to the Fiscal Research Division.

(c) Section 208(d) of Chapter 757 of the 1985 Session Laws is repealed.

PART 32.-----OFFICE OF STATE AUDITOR

Requested by: Representatives Bowman, N. J. Crawford, Senator Martin of Guilford

-----INFORMATION FROM PRIVATE ORGANIZATIONS RECEIVING STATE FUNDS AND FROM STATE AGENCIES PROVIDING THESE FUNDS/INFORMATION FROM STATE AGENCIES JUSTIFYING APPROPRIATIONS REQUESTS

Sec. 190. (a) G.S. 143-6.1 reads as rewritten:

"§ 143-6.1. Information from private organizations receiving State funds; funds; information from State departments and agencies providing State funds.

Every ~~private person~~, corporation, organization, and institution which receives, uses or expends any State funds shall use or expend such funds only for the purposes for which such State funds were appropriated by the General Assembly or collected by the State.

Each ~~private person~~, corporation, organization, and institution which receives, uses or expends State funds in the amount of twenty-five thousand dollars (\$25,000) or more annually, except when the funds are ~~compensation~~ for the purchase of goods or services, shall file annually with the State Auditor and with the Joint Legislative

Commission on Governmental Operations a financial ~~statement~~ statements in such form and on such schedule as shall be prescribed by the State Auditor, and shall furnish to the State Auditor for audit all books, records and other information as shall be necessary for the State Auditor to account fully for the receipt, use and expenditure of State funds. Each such ~~private person~~, corporation, organization, and institution shall furnish such additional financial or budgetary information as shall be requested by the State Auditor or by the Joint Committee on Governmental Operations. All financial statements furnished to the State Auditor or to the Joint Legislative Commission on Governmental Operations pursuant to this section, and any audits or other reports prepared by the State Auditor, shall be public records.

Each State department and agency shall identify to the State Auditor each corporation, organization, and institution to which State funds received by the department or agency have been provided, except for the purchase of goods and services, and submit documents to the State Auditor for approval in a prescribed format describing standards of compliance and suggested audit procedures sufficient to give adequate direction to independent auditors performing audits.

The receipt, use or expenditure of State funds by a ~~private person~~, corporation, organization, and institution shall not, in and of itself, make or constitute such ~~person~~, corporation, organization, or institution a State agency."

(b) G.S. 143-6 reads as rewritten:

" § 143-6. *Information from departments and agencies asking State aid.*

(a) On or before the first day of September ~~biennially~~, in the even-numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies and undertakings receiving or asking financial aid from the State, or receiving or collecting funds under the authority of any general law of the State, shall furnish the Director all the information, data and estimates which he may request with reference to past, present and future appropriations and expenditures, receipts, revenue, and income.

(b) Any department, bureau, division, officer, board, commission, institution, or other State agency or undertaking desiring to request financial aid from the State for the purpose of constructing or renovating any State building, utility, or other property development (except a railroad, highway, or bridge structure) shall, before making any such request for State financial aid, submit to the Department of Administration a statement of its needs in terms of space and other physical requirements, and shall furnish the Department with such additional information as it may request. The Department of Administration shall then prepare preliminary studies and cost

estimates for the use of the requesting department, bureau, division, officer, board, commission, institution, or other State agency or undertaking in presenting its request to the Director of the Budget.

(c) On or before the first day of September in the even-numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies receiving or asking financial aid or support from the State, under the authority of any general law of the State, shall furnish the Director with the following information:

- (1) The amount of State funds disbursed in the immediately preceding two fiscal years and the purpose for which the funds were disbursed and used, the amount being requested as continuation funds for the upcoming fiscal year, and the justification for continued State support; and
- (2) Justification for continued State support shall include information on the extent of the public benefit being derived from State support.

(d) The Office of State Budget and Management and the Director of the Budget shall provide to the General Assembly, on or before January 15 of each odd-numbered year, a report that adequately and fairly presents the information required in this section."

(c) This section does not apply to the General Assembly or its membership.

PART 32.1.----DEPARTMENT OF REVENUE

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----GOVERNMENT SALES TAX REFUND

Sec. 190.1. (a) G.S. 105-164.3 is amended by adding a new subdivision to read:

"(16b) 'State agency' means a unit of the executive, legislative, or judicial branch of State government, such as a department, a commission, a board, a council, or The University of North Carolina. The term does not include a local board of education."

(b) G.S. 105-164.14 reads as rewritten:

"§ 105-164.14. Certain refunds authorized.

(a) Interstate Carriers. Any person engaged in transporting persons or property in interstate commerce for compensation who is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the United States Department of Transportation and who is required by either such federal agency to keep records according to its standard classification of accounting or, in the case of

a small certificated air carrier, is required by the U.S. Department of Transportation to make reports of financial and operating statistics, may secure a refund from the Secretary of Revenue with respect to sales or use tax paid by such person on purchases or acquisitions of lubricants, repair parts and accessories in this State for motor vehicles, railroad cars, locomotives, and airplanes operated by such person, upon the conditions described below. The Secretary of Revenue shall prescribe the periods of time, whether monthly, quarterly, semiannually or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following such periods, an application for refund may be made. An applicant for refund shall furnish such information as the Secretary may require, including detailed information as to lubricants, repair parts and accessories wherever purchased, whether within or without the State, acquired during the period with respect to which a refund is sought, and the purchase price thereof, detailed information as to sales and use tax paid in this State thereon, and detailed information as to the number of miles such motor vehicles, railroad cars, locomotives, and airplanes were operated both within this State, and without this State, during such period, together with satisfactory proof thereof. The Secretary shall thereupon compute the tax which would be due with respect to all lubricants, repair parts and accessories acquired during the refund period as though all such purchases were made in this State, but only on such proportion of the total purchase prices thereof as the total number of miles of operation of such applicants' motor vehicles, railroad cars, locomotives, and airplanes within this State bears to the total number of miles of operation of such applicants' motor vehicles, railroad cars, locomotives and airplanes within and without this State, and such amount of sales and use tax as the applicant has paid in this State during said refund period in excess of the amounts so computed shall be refunded to the applicant.

(b) Nonprofit Corporations. The Secretary of Revenue shall make refunds semiannually to hospitals not operated for profit (including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E), educational institutions not operated for profit, churches, orphanages and other charitable or religious institutions and organizations not operated for profit of sales and use taxes paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(4c), by such institutions and organizations on direct purchases of tangible personal property for use in carrying on the work of such institutions or organizations. Sales and use tax liability indirectly incurred by such institutions and organizations on building materials, supplies, fixtures and equipment which shall become a part of or

annexed to any building or structure being erected, altered or repaired for such institutions and organizations for carrying on their nonprofit activities shall be construed as sales or use tax liability incurred on direct purchases by such institutions and organizations, and such institutions and organizations may obtain refunds of such taxes indirectly paid. The Secretary of Revenue shall also make refunds semiannually to all other hospitals (not specifically excluded herein) of sales and use tax paid by them on medicines and drugs purchased for use in carrying out the work of such hospitals. This subsection does not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c). In order to receive the refunds herein provided for, such institutions and organizations shall file a written request for refund covering the first six months of the calendar year on or before the fifteenth day of October next following the close of said period, and shall file a written request for refund covering the second six months of the calendar year on or before the fifteenth day of April next following the close of that period. Such requests for refund shall be substantiated by such proof as the Secretary of Revenue may require, and no refund shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may require. ~~Notwithstanding the foregoing provisions of this subsection, the constituent institutions of The University of North Carolina may obtain in the manner prescribed by this Article the refund of sales and use tax paid by them on or after January 1, 1992, for tangible personal property acquired by them through the expenditure of contract and grant funds.~~

(c) Certain Governmental Entities. Upon receipt of timely applications for refund, the Secretary of Revenue shall make refunds annually to all governmental entities, as hereinafter defined, of sales and use tax paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(4c), by said governmental entities on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by such governmental entities on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired which is owned or leased by such governmental entities shall be construed as sales or use tax liability incurred on direct purchases by such governmental entities, and such entities may obtain refunds of such taxes indirectly paid. The refund provisions contained in this

subsection shall not apply to any governmental entities not specifically named herein. In order to receive the refund herein provided for, governmental entities shall file a written request for said refund within six months of the close of the fiscal year of the governmental entities seeking said refund, and such request for refund shall be substantiated by such records, receipts and information as the Secretary may require. No refunds shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may otherwise require. The term 'governmental entities,' for the purposes of this subsection, shall mean all counties, incorporated cities and towns, water and sewer authorities created and existing under the provisions of Chapter 162A of the General Statutes, lake authorities created by a board of county commissioners pursuant to an act of the General Assembly, sanitary districts, regional councils of governments created pursuant to G.S. 160A-470, area mental health, mental retardation, and substance abuse authorities (other than single-county area authorities) established pursuant to Article 4 of Chapter 122C of the General Statutes, district health departments, regional planning and economic development commissions created pursuant to G.S. 158-14, regional sports authorities created pursuant to G.S. 160A-479, regional economic development commissions created pursuant to G.S. 158-8, regional planning commissions created pursuant to G.S. 153A-391, metropolitan sewerage districts and metropolitan water districts in this State, the North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes, the North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes, and the Rockingham County Airport Authority. Notwithstanding the foregoing provisions of this subsection, the constituent institutions of The University of North Carolina may obtain in the manner prescribed by this subsection a refund of sales and use tax paid by them on or after January 1, 1992, for tangible personal property acquired by them through the expenditure of contract and grant funds.

(d) Penalties for Late Applications. Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above shall be subject to the following penalties for late filing: applications filed within 30 days after said dates, twenty-five percent (25%); applications filed after 30 days but within six months after said dates, fifty percent (50%). However, refunds which are applied for after six months following said dates shall be barred.

(e) State Agencies. The State is allowed quarterly refunds of local sales and use taxes paid by a State agency on direct purchases of tangible personal property and local sales and use taxes paid indirectly by the State agency on building materials, supplies, fixtures, and

equipment that become a part of or annexed to a building or structure that is being erected, altered, or repaired and is owned or leased by the State agency. This subsection does not apply to purchases for which a State agency is allowed a refund under subsection (c) of this section.

A person who pays local sales and use taxes on building materials or other tangible personal property for a State building project shall give the State agency for whose project the property was purchased a signed statement containing all of the following information:

- (1) The date the property was purchased.
- (2) The type of property purchased.
- (3) The project for which the property was used.
- (4) If the property was purchased in this State, the county in which it was purchased.
- (5) If the property was not purchased in this State, the county in which the property was used.
- (6) The amount of sales and use taxes paid.

If the property was purchased in this State, the person shall attach a copy of the sales receipt to the statement. A State agency to whom a statement is submitted shall verify the accuracy of the statement.

Within 15 days after the end of each calendar quarter, every State agency shall file with the Secretary a written application for a refund of taxes to which this subsection applies paid by the agency during the quarter. The application shall contain all information required by the Secretary. The Secretary shall credit the local sales and use tax refunds directly to the General Fund."

(c) This section is effective upon ratification. G.S. 105-164.14(e), as enacted by this section, applies to property purchased on or after April 1, 1991. Notwithstanding the provisions of G.S. 105-164.14(e), as enacted by this section, every State agency to which that provision applies shall, within 15 days after the date this act is ratified, file the application for a refund of taxes paid during the quarter that ends July 1, 1991.

Requested by: Representatives Bowman, N.J. Crawford, Senators Martin of Guilford, Basnight, Plyler

-----DEPARTMENT OF REVENUE AUTOMATION PROPOSAL

Sec. 190.2. (a) The Department of Revenue shall present a written and verbal report not later than October 15, 1991, to a full meeting of the Information Technology Commission and to the Office of State Budget and Management on the emergency conditions that exist in its information systems operations. The Information Technology Commission shall make a recommendation to the Office of State Budget and Management concerning the nature of the emergency

and a recommendation on whether funds should be expended from the Reserve for Data Processing Equipment in the Office of State Budget and Management to meet the emergency situation.

(b) The Information Technology Commission shall appoint from its membership a five-member subcommittee to analyze the Department of Revenue's proposal to acquire a mainframe computer and install tax administration software to enhance its integrated tax administration system. One of the five members of the subcommittee shall be the State Auditor, who shall serve as its chairman. The subcommittee shall rely on staff expertise from the Office of State Controller, State Information Processing Services (SIPS), the Department of Revenue, and management information systems staff in the other departments represented on the Information Technology Commission to prepare the analysis. This analysis shall address (i) whether the Department of Revenue's proposal is practical, (ii) the amount by which the proposal will increase tax collections, (iii) the amount of savings to the State the proposal will produce by improving tax efficiency, (iv) the amount of savings to the State that would result from the receipt of tax payments by electronic funds transfer pursuant to the enhanced automation system based on increased investment earnings on these payments due to the reduced time lag in receiving and processing the payments, and (v) any other relevant issues. The subcommittee's written analytic report, and any relevant materials obtained or prepared by the subcommittee, shall be presented to a full meeting of the Information Technology Commission not later than October 31, 1991. The Information Technology Commission shall deliver a report, incorporating the subcommittee's analysis and containing specific recommendations concerning the Department of Revenue's proposal, to the Fiscal Research Division and the Automated Systems Division of the General Assembly not later than December 31, 1991. The Information Technology Commission shall present its report and analysis to the Joint Legislative Commission on Governmental Operations on or before March 1, 1992.

PART 33.-----DEPARTMENT OF CULTURAL RESOURCES

Requested by: Representatives Bowman, N.J. Crawford, Colton.
Senator Martin of Guilford

-----MUSEUM OF HISTORY/MODIFY DUTIES

Sec. 191. (a) G.S. 121-7(b) reads as rewritten:

"(b) Insofar as practicable, the North Carolina Museum of History shall accession and maintain records showing provenance, value, location, and other pertinent information on such furniture, furnishings, decorative items, and other objects as have historical or

cultural importance and which are owned by or to be acquired by the State for use in the State Capitol. ~~Capitol and the Executive Mansion, and, upon request of the Department of Administration, any other state-owned building.~~ When any such item or object has been entered in the accession records of the Museum of History, the custodian of such item or object shall, upon its removal from the premises upon which it was located or when it is otherwise disposed of, submit to the Museum of History sufficient details concerning its removal or disposition to permit an adequate entry in the accession records to the end that its location or disposition, and authority for such change, shall be showed therein."

(b) This section is effective upon ratification.

Requested by: Representatives Bowman, N.J. Crawford, Colton, Senator Martin of Guilford

-----MUSEUM OF HISTORY CONTRACTS

Sec. 192. (a) G.S. 121-4 is amended by adding a new subdivision to read:

"(16) To enter into an agreement with a private nonprofit corporation for the management of facilities to provide food and beverages at the North Carolina Museum of History. Any net proceeds received by the private nonprofit corporation shall be devoted to the work of the Department. Any private nonprofit corporation entering into an agreement with the Department with regard to the management of the facilities may enter into further agreements with private persons or corporations concerning the operation of the facilities. The Department may enter into an agreement in regard to obtaining or installing equipment, furniture, and furnishings for such facilities."

(b) This section is effective upon ratification.

PART 34.-----PUBLIC SCHOOLS

Requested by: Senators Ward, Warren, Basnight, Plyler

-----TEACHER SALARY SCHEDULE

Sec. 193. (a) The following monthly salary schedule shall apply to certified personnel of the public schools who are classified as "A" teachers for the 1991-92 fiscal year. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

Years <u>Experience</u>	1991-92 <u>Salary</u>
0	\$1,981
1	1,981
2	2,021
3	2,111
4	2,141
5	2,172
6	2,204
7	2,263
8	2,332
9	2,366
10	2,400
11	2,458
12	2,494
13	2,530
14	2,598
15	2,636
16	2,706
17	2,746
18	2,819
19	2,897
20	2,939
21	3,021
22	3,065
23	3,149
24	3,195
25	3,241
26	3,288
27	3,336
28	3,386
29+	3,436

Notwithstanding the salary schedule set out in this subsection, certified personnel of the public schools who are classified as "A" teachers for the 1991-92 fiscal year and who had 29 or more years of experience during the 1990-91 fiscal year, shall receive a monthly salary of \$3,487.

(b) The following monthly salary schedule shall apply to certified personnel of the public schools who are classified as "G" teachers for the 1991-92 fiscal year. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

Years <u>Experience</u>	1991-92 <u>Salary</u>
0	\$2,105
1	2,105
2	2,147
3	2,241
4	2,273
5	2,306
6	2,339
7	2,404
8	2,469
9	2,505
10	2,541
11	2,609
12	2,647
13	2,685
14	2,724
15	2,798
16	2,875
17	2,916
18	2,998
19	3,042
20	3,125
21	3,170
22	3,259
23	3,306
24	3,399
25	3,447
26	3,497
27	3,548
28	3,600
29+	3,652

Notwithstanding the salary schedule set out in this subsection, certified personnel of the public schools who are classified as "G" teachers for the 1991-92 fiscal year and who had 29 or more years of experience during the 1990-91 fiscal year, shall receive a monthly salary of \$3,706.

(c) The rules adopted by the State Board of Education for allocating funds to individuals shall provide for (i) a seven and one-half percent (7.5%) salary increase for teachers with certification based on academic preparation at the six-year degree level; (ii) a ten percent (10%) salary increase for teachers with certification based on academic preparation at the doctoral degree level; and (iii) annual

longevity pay at two and one-half percent (2.5%) of base salary only upon the completion of 25 years of State service.

Requested by: Representatives Fussell, Payne, Barnes, Senators Ward, Warren

-----SENATE BILL 2 FUNDS

Sec. 194. (a) Of the funds appropriated to administer the School Improvement and Accountability Act of 1989, Senate Bill 2 of the 1989 General Assembly, the sum of \$10,000,000 for the 1991-92 fiscal year shall be used only for staff development activities to assist local school administrative units in developing and implementing local school improvement plans. These funds shall not be used for differentiated pay. No local school administrative unit shall use more than its pro rata share of \$10,000,000 for staff development activities.

Staff development funds may be used for pay for substitute teachers, stipends for employees who participate in staff development activities outside of the regular work day, salary and benefits for instructors, and workshop expenses.

All funds allocated pursuant to this subsection for staff development that are not spent for that purpose shall revert on June 30, 1992.

(b) Of the funds appropriated to administer the School Improvement and Accountability Act of 1989, the sum of \$29,436,046 for the 1991-92 fiscal year shall be used only for differentiated pay, in accordance with this subsection. These funds shall not be used for staff development activities.

Within 30 days of the first teacher workday on the 1991-92 school calendar, each local board of education shall present to affected employees, for their review and vote, two options for differentiated pay for the 1991-92 school year only. The first differentiated pay option shall be a proposal to continue or modify, in accordance with the School Improvement and Accountability Act of 1989, its existing differentiated pay plan. The second differentiated pay option shall be a proposal for across-the-board bonuses for all affected employees. These across-the-board bonuses shall be an equal percent of the State-paid salary for each affected employee, except that the maximum amount any employee may receive shall be \$550.

The vote shall be by secret ballot. All of the certificated instructional staff members, instructional support staff members, and certificated administrators who are eligible to receive funds for differentiated pay under the School Improvement and Accountability Act of 1989 may vote. The local board shall immediately submit the option that receives a majority of all the votes cast to the Superintendent of Public Instruction for his approval. A differentiated

pay plan shall become effective upon the approval of the Superintendent.

If a local board of education implements across-the-board bonuses for the 1991-92 school year, all funds not spent for that purpose shall revert on June 30, 1992.

(c) The total amount received by a local school administrative unit under this section shall be no more than 2% of the State-paid teachers' and administrators' salaries, and the employer's contribution for social security and retirement.

(d) This section does not apply to any funds appropriated for the career ladder pilot units.

With regard to a local school administrative unit that resulted from the merger of a career ladder pilot unit and another unit, this section shall apply only to funds received under this section to administer the School Improvement and Accountability Act of 1989.

(e) This section applies to the 1991-92 fiscal year only.

Requested by: Representatives Diamont, Payne, Fussell, Barnes, Senators Ward, Warren

-----SALARY SCHEDULE FOR ADMINISTRATORS

Sec. 195. Prior to February 1, 1992, the State Board of Education shall develop a reasonable salary schedule for superintendents, assistant superintendents, associate superintendents, supervisors, directors, coordinators, evaluators, program administrators, principals, and assistant principals whose salaries are supported from the State's General Fund.

The State Board of Education shall also develop a reasonable schedule for implementing this salary schedule.

The State Board of Education shall report to the Joint Legislative Commission on Governmental Operations prior to February 1, 1992, on the salary schedule developed pursuant to this section and the proposed implementation schedule for this salary schedule.

This section shall not be construed to obligate the General Assembly to appropriate funds to implement the salary schedule developed pursuant to this section or to obligate the State Board of Education to implement the salary schedule.

Requested by: Representatives Barnes, Fussell, Payne, Rogers, Diamont, Nesbitt, Senators Ward, Warren

-----BASIC EDUCATION PROGRAM

Sec. 196. (a) G.S. 115C-81(a) reads as rewritten:

"(a) The State Board of Education shall adopt a Basic Education Program for the public schools of the State. Before it adopts or revises the Basic Education Program, the State Board shall consult with an

Advisory Committee, including at least eight members of local boards of education, that the State Board appoints from a list of nominees submitted by the North Carolina School Boards Association. The State Board shall report annually to the General Assembly on any changes it has made in the program in the preceding 12 months and any changes it is considering for the next 12 months.

The State Board of Education shall review the Basic Education Program in an effort to (i) simplify the Basic Education Program, especially the standard course of study and the core curriculum for all students, and (ii) assure that the Program adopted by the State Board and implemented by the local boards of education carries out the intent of the General Assembly to provide every student in the State equal access to a Basic Education Program. The State Board shall report the results of its review to the Joint Legislative Education Oversight Committee and to the General Assembly prior to March 15, 1992.

The State Board shall implement the Basic Education Program within funds appropriated for that purpose by the General Assembly and by units of local government. It is the intent of the General Assembly that until the Basic Education Program is fully funded, the implementation of the Basic Education Program shall be the focus of State educational funding. It is the goal of the General Assembly that the Basic Education Program be fully funded and completely operational in each local school administrative unit by July 1, 1995.

It is further a goal of the General Assembly to provide supplemental funds to low-wealth counties to allow those counties to enhance the instructional program and student achievement."

(b) G.S. 115C-12(9) reads as rewritten:

"(9) Miscellaneous Powers and Duties. -- All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

- a. To certify and regulate the grade and salary of teachers and other school employees.
- b. To adopt and supply textbooks.
- c. To adopt rules requiring all local boards of education to implement the Basic Education Program on an incremental basis within funds appropriated for that purpose by the General Assembly and by units of local government. Beginning with the 1991-92 school year, the rules shall require each local school administrative unit to implement fully the standard course of study in every school in the State in accordance with the Basic

Education Program so that every student in the State shall have equal access to the curriculum as provided in the Basic Education Program and the standard course of study.

The Board shall establish benchmarks by which to measure the progress that each local board of education has made in implementing the Basic Education Program. The Board shall report to the Joint Legislative Education Oversight Committee and to the General Assembly by December 31, 1991, and by February 1 of each subsequent year on each local board's progress in implementing the Basic Education Program, including the use of State and local funds for the Basic Education Program.

The Board shall develop a State accreditation program that meets or exceeds the standards and requirements of the Basic Education Program. The Board shall require each local school administrative unit to comply with the State accreditation program to the extent that funds have been made available to the local school administrative unit for implementation of the Basic Education Program.

The Board shall use the State accreditation program to monitor the implementation of the Basic Education Program.

- c1. To issue an annual 'report card' for the State and for each local school administrative unit, assessing each unit's efforts to improve student performance and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account demographic, economic, and other factors that have been shown to affect student performance.
- c2. To develop management accountability indicators to measure the efficiency and appropriate use of staff in each school and at the administrative office. Staff development for school administrators shall be a high priority of the Department of Public Instruction.
- d. To formulate rules and regulations for the enforcement of the compulsory attendance law.
- e. To manage and operate a system of insurance for public school property, as provided in Article 38 of this Chapter.

In making substantial policy changes in administration, curriculum, or programs the Board should conduct hearings throughout the regions of the State, whenever feasible, in order that the public may be heard regarding these matters."

(c) G.S. 115C-238.6(a) reads as rewritten:

"(a) Prior to June 30 each year, the State Superintendent shall review local school improvement plans submitted by the local school administrative units in accordance with policies and performance indicators adopted by the State Board of Education. If the State Superintendent approves the plan for a local school administrative unit, that unit shall participate in the Program for the next fiscal year.

If a local plan contains a request for a waiver of State laws, regulations, or policies, in accordance with G.S. 115C-238.3(e), the State Superintendent shall determine whether and to what extent the identified laws, regulations, or policies should be waived. The State Superintendent shall present that plan and his determination to the State Board of Education. If the State Board of Education deems it necessary to do so to enable a local unit to reach its local accountability goals, the State Board, only upon the recommendation of the State Superintendent, may grant waivers of:

- (1) State laws pertaining to class size, teacher certification, assignment of teacher assistants, the use of State-adopted textbooks, and the purposes for which State funds for the public schools may be ~~used, and~~ used: Provided, however, the State Board of Education shall not permit the use of funds for teachers for expanded programs under the Basic Education Program for any other purpose;
- (2) All State regulations and policies, except those pertaining to State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-325, health and safety codes, compulsory school attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System."

(d) The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee and to the General Assembly before May 1, 1992, on the methods used to measure student achievement.

(e) Funds appropriated to the Department of Public Education for the 1991-93 fiscal biennium to be used in completing the funding of teachers for expanded programs under the Basic Education Program

shall be used by local school administrative units (i) to implement fully the standard course of study in every school in the State in accordance with the Basic Education Program so that every student in the State shall have equal access to the curriculum provided for therein, and (ii) to restore local teaching positions that may have been deleted as a result of budget cuts contained in this act.

The State Board of Education shall not waive, in accordance with G.S. 115C-238.6(a), the requirement that all local schools use these funds for teachers for expanded programs to implement fully the standard course of study in every school in the State.

(f) It is the intent of the General Assembly that base budget reductions made in this act in clerical positions for local school administrative units be taken to the extent possible in central office positions and not in school-based positions.

Requested by: Representatives Barnes, Diamont, Nesbitt, Payne, Fussell, Senators Ward, Warren

-----EXTENDED SCHOOL DAY

Sec. 197. G.S. 115C-84(a) reads as rewritten:

"(a) School Day. -- The length of the school day shall be determined by the several local boards of education for all public schools in their respective local school administrative units, and the minimum time for which teachers shall be employed in the schoolroom or on the grounds supervising the activities of children shall not be less than six hours: Provided, the several local boards of education may adopt rules and regulations allowing handicapped pupils, kindergarten pupils, and pupils attending the first, second, and third grades to attend school for a period less than six hours. The superintendent of the several local boards of education, in the event of an emergency, act of God, or any other conditions requiring the termination of classes before six hours have elapsed, may suspend the operation of any school for that particular day without loss of credit to the pupil or loss of pay to the teacher.

The General Assembly urges the local boards of education to expand the length of the school day so that it includes at least six hours of instructional time."

Requested by: Representatives Barnes, Fussell, Payne, Diamont, Nesbitt, Senators Ward, Warren

-----SCHOOL-TO-WORK TRANSITION

Sec. 198. G.S. 115C-81(a1) reads as rewritten:

"(a1) The Basic Education Program shall describe the education program to be offered to every child in the public schools. It shall provide every student in the State equal access to a Basic Education

Program. Instruction shall be offered in the areas of arts, communication skills, physical education and personal health and safety, mathematics, media and computer skills, science, second languages, social studies, and vocational education.

Instruction in vocational education under the Basic Education Program shall be based on factors including:

- (1) The integration of academic and vocational education;
- (2) A sequential course of study leading to both academic and occupational competencies;
- (3) Increased student work skill attainment and job placement;
- (4) Increased linkages, where geographically feasible, between public schools and community colleges, so the public schools can emphasize academic preparation and the community colleges can emphasize specific job training; and
- (5) Instruction and experience, to the extent practicable, in all aspects of the industry the students are prepared to enter."

Requested by: Representatives Payne, Fussell, Barnes, Nesbitt, Diamont, Senators Basnight, Plyler, Barnes, Ward, Warren

-----OUTCOME-BASED EDUCATION

Sec. 199. (a) Article 16 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 5. Outcome-Based Education Program.

" § 115C-238.12. Purpose of program.

An outcome-based education program is a program in which expectations for student achievement are clearly stated in terms of knowledge, skills, and attitudes. Students develop skills and attitudes to maximize the acquisition of knowledge. The program recognizes that achievement occurs as a result of individual and developmental progress towards goals, and reflects that students learn at different rates using varying learning styles. Outcome-based education measures achievement periodically throughout the learning process and is the criteria for high school graduation. Measurement of student achievement is implemented by teachers to complement varied learning growth and styles. The results of those measurements are used to determine when a student understands and has mastered the material and is ready to move forward in the learning process.

" § 115C-238.13. Implementation of the project by the State Board of Education.

(a) The State Board of Education shall develop and implement an outcome-based education program. The State Board of Education shall select four sites to participate in the program for five fiscal years beginning with the 1992-93 fiscal year. The first year of the project shall be a year for the sites to plan their projects. The remaining four

years shall be to implement the projects and to demonstrate their effectiveness.

(b) The State Board of Education shall adopt expectations for student achievement, necessary for students to function successfully in the next century. These expectations shall be consistent with national education goals recommended by the National Governors' Association in 1990. The State Board of Education, after consultation with the Board of Governors of The University of North Carolina, the State Board of Community Colleges, representatives of independent colleges, representatives of the business community, representatives of the Department of Public Instruction, representatives of local school administrative units, principals, teachers, and parents, shall adopt proficiencies that are required for graduation from high school. These expectations and proficiencies shall be adopted no later than June 15, 1992, and shall be used by the sites to develop their local outcome-based education projects.

The proficiencies that are required for graduation from high school may include:

- (1) Writing -- High school graduates will be able to organize complex, demanding, and extended subject matter clearly and effectively. They will produce structured writings in which relationships between successive paragraphs are signaled by connective words and phrases. They will punctuate their writing so that meaning and structure are clear.
- (2) Reading -- High school graduates will be able to make independent and discriminating selections from a range of reference materials; retrieve information from those materials using techniques such as skimming; and evaluate and synthesize information from different parts of a text or different texts.
- (3) Mathematics -- High school graduates will be able to present a set of complex data in a simplified form using a variety of diagrams and graphs.

(c) The State Board of Education, the Board of Governors of The University of North Carolina, and the State Board of Community Colleges shall work jointly to develop a mechanism by which the institutions of higher education accept certification of proficiencies on high school transcripts in lieu of Carnegie units.

" § 115C-238.14. Selection of sites.

(a) No later than October 10, 1991, the State Board of Education shall develop a competitive process for the selection of project sites.

(b) No later than November 30, 1991, the Department of Public Instruction shall initiate the competitive process for the selection of

project sites and shall conduct regional briefings for local school administrative units interested in submitting proposals. The regional briefings shall provide detailed information about outcome-based education models so local school administrative units can decide whether to compete for selection as a project site.

(c) No later than February 29, 1992, local school administrative units shall submit their proposals to the Department of Public Instruction. The proposal may cover all or part of the schools in a local school administrative unit.

The proposal shall include information regarding the local school administrative unit's plan for, ability to, and commitment to complying with the following requirements for local programs:

- (1) The program shall ensure that all students have access to a common core of knowledge and that all students are treated equitably.
- (2) Student advancement shall be based on the mastery of the proficiencies adopted by the State Board of Education pursuant to G.S. 115C-238.13(b).
- (3) Students shall be allowed to progress at different rates; however, expectations for progress shall be based on the goal that all students master the proficiencies required for high school graduation. Computer assisted, personal education plans shall be available for every student.
- (4) Parents and guardians shall be involved in a student's selection of high school completion options.
- (5) Teachers and principals shall have a major role in development of local projects.
- (6) A majority of the teachers and principals who will participate in the pilot project shall approve the proposal for selection as a pilot site and the plans for the local program before they are submitted to the Department of Public Instruction.
- (7) Programs shall provide each student a school-based adult advocate to foster self-esteem, protect learning options, ensure that student needs are being met, and ensure that students are being treated equitably.
- (8) Projects shall be shared with the public. Annual reports describing program goals, activities, and accomplishments shall be made available to the public. The reports shall contain specific information regarding the contributions of teachers, administrators, and the local board of education to the program, and to student progress under the program.

(d) The Department of Public Instruction shall review the proposals and shall transmit its recommendations regarding the sites to the State Board of Education no later than April 30, 1992. The Department of

Public Instruction shall involve an advisory committee comprised of business leaders, legislators, school board members, public school administrators, and other educators in the review process.

(e) The State Board of Education shall select the project sites no later than June 15, 1992. The State Board shall base its decision on the local school administrative units' plans for, ability to, and commitment to complying with the requirements for local programs set out in subsection (c) of this section.

" § 115C-238.15. Development of local programs by the project sites.

(a) From June 15, 1992, through March 15, 1993, the project sites shall develop their local programs. No later than March 15, 1993, the sites shall submit their plans to the Department of Public Instruction for review. No later than May 30, 1993, the Department shall review the plans and work with the sites to assure that the plans carry out the provisions of this Part.

(b) The Department of Public Instruction shall provide technical assistance to the sites in developing their local programs.

(c) In developing its local plan, each local school administrative unit shall select the outcome-based education model to be followed. Each local school administrative unit shall determine the instructional programs and strategies used to develop student proficiencies at its site. Under the plan, teachers shall determine when the proficiencies of a group of students are assessed; provided, however, State-administered tests shall be used to test proficiencies at a site no more than four times a year. Student advancement shall be determined by school-based personnel assigned to oversee the instructional program of a group of students.

(d) In developing and administering local projects, local boards of education need broad decision-making authority so that teachers and administrators at the sites can experiment with the instructional activities that meet the instructional needs in that particular setting. Each local school administrative unit shall set forth in its plan, with specificity, those aspects of the plan that would be enhanced by flexibility with regard to statutes and regulations. The State Board of Education may grant each local school administrative unit such flexibility with regard to statutes and regulations as it finds necessary and appropriate to implement a local program (i) so long as the projects and activities are carried out within total funds available for that purpose, and (ii) so long as the State Board of Education does not find as a fact that the flexibility is being abused.

The State Board of Education shall report such flexibility with regard to statutes and regulations contained in any projects or proposed changes to projects to the Joint Legislative Commission on Governmental Operations.

(e) Local projects may include model accountability programs that meet the needs of the project sites. To the extent that the State Board of Education finds that these accountability programs provide sufficient data for oversight, they may be used instead of other State-mandated programs.

(f) Local projects shall include plans to train and retrain teachers, administrators, and school board members to implement the projects.

" § 115C-238.16. Approval and implementation of plans.

(a) Between March 15, 1993, and June 1, 1993, the State Board of Education shall receive plans for projects from the project sites and the comments of the Department of Public Instruction regarding the projects.

(b) No later than June 15, 1993, the State Board of Education shall approve the plans for the projects, approve the plans with modifications, or reject the plans.

(c) The project sites shall begin implementation immediately of projects approved, or approved with modifications, by the State Board.

" § 115C-238.17. Annual assessment and reapproval of plans.

(a) Between March 15 and May 15 of each subsequent year of the project, the projects shall submit to the Department of Public Instruction any data requested by the Department of Public Instruction or the State Board of Education and any proposed changes in the projects. No later than May 30 each year, the Department shall review the data and the proposed changes in the plans for the projects and shall work with the project sites to assure that the plans carry out the provisions of this Part.

(b) Between March 15 and June 1 of each subsequent year, the State Board of Education shall receive the data requested and the proposed changes in plans for projects from the project sites and shall receive the comments of the Department of Public Instruction regarding the data and the proposed changes in the projects. The State Board shall also consider the results of audits and evaluations performed pursuant to G.S. 115C-238.18.

(c) No later than June 15 of each subsequent year, the State Board of Education shall reapprove the plans and any changes for the projects, reapprove the plans and any changes with modifications, or reject the plans.

(d) The project sites shall begin implementation immediately of projects reapproved, or reapproved with modifications, by the State Board.

" § 115C-238.18. Evaluation of program.

(a) State-Level Program Evaluation Procedures. -- A program audit shall be conducted by the Office of the State Auditor following the first and second years of the program. The audit shall certify that the State

Board of Education and State Department of Public Instruction have implemented procedures as specified by the General Assembly. The audit shall focus on the autonomy and flexibility given to local school administrative units in the development of outcome-based education models and plans so as to determine if the appropriate amount of autonomy and flexibility was sought and granted and if the autonomy and flexibility were used properly.

(b) Local-Level Program Evaluation Procedures. --

- (1) The program audit conducted by the Office of the State Auditor following the second year of the program shall include a local-level procedures component. The audit shall certify that local plans contain elements as specified by the General Assembly. The audit shall also certify that teachers and building level administrators were involved in the development of plans.
- (2) The Department of Public Instruction shall conduct a process evaluation of each pilot site following the second through sixth years of the program. The evaluation shall determine how well plans have been implemented. The evaluation shall focus on staff development, organizational and instructional activities, and the involvement and acceptance of the project by all concerned groups including the board of education, administrators, teachers, parents, students, and the business community.

(c) Student-Level Outcomes Evaluation. --

- (1) Local pilot sites shall develop and implement accountability models designed to measure student outcomes. The plans shall include the use of tests available through the State's testing program. Accountability models shall be part of the site plans submitted to the State Board for approval.
- (2) The State Department of Public Instruction shall audit the implementation of accountability models. Audits shall be conducted following the third, fourth, fifth, and sixth years of the program.
- (3) The State Department of Public Instruction shall conduct a summative evaluation following the sixth year of the program. Student outcomes shall be the focus of the summative evaluation.

(d) Reports to the General Assembly. -- The State Board of Education shall submit a summative evaluation report on the projects to the General Assembly no later than March 15, 1998.

" § 115C-238.19. Solicitation of private funds for additional sites.

The State Board of Education shall design and implement a program for soliciting private funds to support the outcome-based education

pilot sites. As funds become available, the State Board may request that the General Assembly authorize additional sites to participate in the program."

(b) Of the funds appropriated to the Department of Public Education, the sum of \$100,000 for the 1991-92 fiscal year shall be used for advance planning for the outcome-based education program at four sites pursuant to subsection (a) of this section and the sum of \$3,000,000 for the 1992-93 fiscal year shall be used to implement the program at the four pilot sites. These funds shall be allocated on the basis of \$500.00 for each State-funded certificated employee participating in the program. These funds shall be used (i) for staff development activities, including planning activities, for teachers, administrators, and school board members, (ii) to pay substitute teachers while teachers are engaged in staff development activities, and (iii) to pay 10-month employees for participating in staff development activities, including planning activities during the summer.

It is the intent of the General Assembly to appropriate an additional \$3,000,000 each year for the 1993-94 through 1996-97 fiscal years to complete the implementation of the outcome-based education program at the four sites.

(c) Of the funds appropriated for aid to local school administrative units for the 1991-92 fiscal year, the State Board of Education may allocate \$2,019,940 to the Department of Public Instruction to implement and administer end-of-course tests, to continue the Preliminary Scholastic Aptitude Testing (PSAT) Program, and to continue the National Assessment of Educational Program (NAEP) testing.

Requested by: Representatives Diamont, Payne, Fussell, Barnes
Nesbitt, Senators Ward, Warren
-----SCHOOL ADMINISTRATOR TRAINING AND
CERTIFICATION

Sec. 200. (a) G.S. 115C-284 reads as rewritten:

"§ 115C-284. *Method of selection and requirements.*

(a) Principals and supervisors shall be elected by the local boards of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

(b) In the city administrative units, principals shall be elected by the board of education of such administrative unit upon the recommendation of the superintendent of city schools.

(c) The State Board of Education shall have entire control of certifying all applicants for supervisory and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all

certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes. Provided, that the State Board of Education shall require each applicant for an initial certificate or graduate certificate to demonstrate his academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose: Provided, further, that in the event the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972: Provided, further, that the Board shall not issue provisional certificates for principals and assistant principals.

(c1) It is the policy of the State of North Carolina to maintain the highest quality principal and assistant principal education programs in order to enhance the competence of professional personnel certified in North Carolina. To ensure that principal and assistant principal preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education shall submit to the General Assembly not later than March 1, 1992, a plan to promote this policy. In developing this plan, the State Board shall consider (i) requiring these programs to include additional preparation for site-based decision making and for the additional autonomy being granted to local schools units, (ii) enhancing program entrance requirements to include assessment of an applicant's ability to complete the program and to perform as a principal, and (iii) enhancing the overall content of the programs.

The State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors and such other public and private agencies as are necessary, shall refine the several certification requirements, standards for approval of institutions of principal and assistant principal education, standards for institution-based innovative and experimental programs, and standards for improved efficiencies in the administration of the approved programs.

(d) Repealed by Session Laws 1989, c. 385, s. 1.

(d1) It is the policy of the State of North Carolina that, subsequent to the adoption of a system of classroom teacher differentiation and prerequisites to candidacy for principal, a classroom teacher must have attained at least the second level of differentiation, have at least four years of classroom teaching experience, and possess, at least, a Masters Degree in Education Administration. This subsection shall not apply to educational personnel certified as of July 1, 1984.

(e) It shall be unlawful for any board of education to employ or keep in service any principal or supervisor who neither holds nor is

qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education.

(f) The allotment of classified principals shall be one principal for each duly constituted school with seven or more state-allotted teachers and shall be included in the calculation of the allotment of general teachers set out in G.S. 115C-301(b)(i).

(g) Local boards of education shall have authority to employ supervisors in addition to those that may be furnished by the State when, in the discretion of the board of education, the schools of the local school administrative unit can thereby be more efficiently and more economically operated and when funds for the same are provided in the current expense fund budget. The duties of such supervisors shall be assigned by the superintendent with the approval of the board of education.

(h) All principals and supervisors employed in the public schools of the State or in schools receiving public funds, shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education. ~~Provided, that nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe.~~ Education."

(b) G.S. 115C-289 reads as rewritten:

"§ 115C-289. Assignment of principal's duties to assistant or acting principal; duties of State-funded assistant principals.

(a) Any duty or responsibility assigned to a principal by statute, State Board of Education regulation, or by the superintendent may, with the approval of the local board of education, be assigned by the principal to an assistant principal designated by the local board of education or to an acting principal designated by a principal.

(b) ~~Except as provided in subsection (c), all~~ All persons employed as assistant principals in State-allotted positions, or as assistant principals in full-time positions regardless of funding source, in the public schools of the State or in schools receiving public funds, shall, in addition to other applicable requirements, be required either to hold or be qualified to hold a principal's certificate in compliance with applicable law and in accordance with the regulations of the State Board of Education. ~~Except as provided in subsection (c), it~~ It shall be unlawful for any board of education to employ or keep in service any assistant principal who neither holds nor is qualified to hold a principal's certificate in compliance with applicable law and in accordance with the regulations of the State Board of Education. ~~Nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe.~~

~~(c) Subsection (b) shall not apply to any person who was employed as an assistant principal in either a full- or part-time position during the 1986-87 school term until the first day of the 1990-91 school term. Such persons shall meet all other requirements which are applicable to teachers generally. In addition, the local board of education may in its discretion require that any person employed as an assistant principal make satisfactory progress, as determined by the local board, toward meeting the requirements for certification as a principal.~~

(d) Assistant principals paid from State funds shall not have regularly assigned teaching duties."

(c) Chapter 115C of the General Statutes is amended by adding a new section to read:

" § 115C-12.1. Training of State Board members.

The State Board of Education shall establish minimum training requirements for members of the State Board of Education. All Board members shall participate in training programs, as required by the State Board."

(d) Chapter 115C of the General Statutes is amended by adding a new section to read:

" § 115C-50. Training of board members.

All members of local boards of education shall receive a minimum of 12 clock hours of training annually. The training shall include but not be limited to public school law, public school finance, and duties and responsibilities of local boards of education. The training may be provided by the North Carolina School Boards Association, the Institute of Government, or other qualified sources at the choice of the local board of education."

(e) Chapter 116 of the General Statutes is amended by adding a new section to read:

" § 116-11.2. Duties regarding programs in education administration.

The Board of Governors shall direct the constituent institutions with programs in education administration to revise the programs to reflect any increased standards required for programs approved by the State Board of Education, including new requirements for school-based leadership in the public schools. The Board of Governors shall monitor the programs and devise an assessment plan for all programs leading to certification in education administration."

(f) Of the funds appropriated to the Board of Governors of The University of North Carolina for the 1991-93 fiscal biennium, the sum of \$150,000 for the 1991-92 fiscal year and the sum of \$570,000 for the 1992-93 fiscal year shall be used to expand the Principals Executive Program operated by the Institute of Government. Of these funds, the sum of \$150,000 for the 1991-92 fiscal year and the sum

of \$150,000 for the 1992-93 fiscal year shall be used to expand the program at the Chapel Hill site; the sum of \$420,000 for the 1992-93 fiscal year shall be used to provide the program at additional sites throughout the State and to offer the program to assistant principals.

Requested by: Representatives Holt, Payne, Fussell, Barnes, Senators Ward, Warren

-----NO WAIVERS OF FUNDS FOR SCHOOL HEALTH COORDINATORS

Sec. 201. G.S. 115C-238.6(a) reads as rewritten:

"(a) Prior to June 30 each year, the State Superintendent shall review local school improvement plans submitted by the local school administrative units in accordance with policies and performance indicators adopted by the State Board of Education. If the State Superintendent approves the plan for a local school administrative unit, that unit shall participate in the Program for the next fiscal year.

If a local plan contains a request for a waiver of State laws, regulations, or policies, in accordance with G.S. 115C-238.3(e), the State Superintendent shall determine whether and to what extent the identified laws, regulations, or policies should be waived. The State Superintendent shall present that plan and his determination to the State Board of Education. If the State Board of Education deems it necessary to do so to enable a local unit to reach its local accountability goals, the State Board, only upon the recommendation of the State Superintendent, may grant waivers of:

- (1) State laws pertaining to class size, teacher certification, assignment of teacher assistants, the use of State-adopted textbooks, and the purposes for which State funds for the public ~~schools~~ schools, except for funds for school health coordinators, may be used, and
- (2) All State regulations and policies, except those pertaining to State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-325, health and safety codes, compulsory school attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System."

Requested by: Representatives Payne, Fussell, Senators Basnight, Plyler

-----SMALL SCHOOL SYSTEM SUPPLEMENTAL FUNDING

Sec. 201.1. (a) The State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to

each county school administrative unit with an average daily membership of less than 3,000 students and (ii) to each county school administrative unit with an average daily membership of from 3,000 to 4,000 students if the county in which the local school administrative unit is located has a county adjusted property tax base per student that is below the State adjusted property tax base per student. The allocation formula shall:

- (1) Round all fractions of positions to the next whole position;
- (2) Provide four additional regular classroom teachers;
- (3) Provide additional program enhancement teachers adequate to offer the standard course of study;
- (4) Change the duty-free period allocation to one teacher assistant per 400 average daily membership;
- (5) Provide a base for the consolidated funds allotment of at least \$150,000, excluding textbooks; and
- (6) Allot vocational education funds for grade 6 as well as for grades 7-12.

If funds appropriated for each fiscal year for small school system supplemental funding are not adequate to fund fully the program, the State Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis. This formula is solely a basis for distribution of supplemental funding for certain county school administrative units and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for such county administrative units.

(b) A county in which a local school administrative unit receives funds under this section shall use the funds to supplement and not supplant existing State and local funding for public schools.

The Local Government Commission shall analyze the budgets and the expenditures of school administrative units that receive funds under this section in light of their budgets and expenditures for the previous year and shall determine whether those funds were used to supplement and not supplant State and local funding for public schools. The Local Government Commission shall report the results of its study to the State Board of Education, the Joint Legislative Oversight Committee, and the Appropriations Committees of the Senate and the House of Representatives, prior to May 1, 1993.

(c) As used in this section:

- (1) "Average daily membership" means the final average daily membership in the most recent year for which county current expense appropriations and adjusted property tax valuations are available.

- (2) "County adjusted property tax base per student" means the total assessed property valuation for each county, adjusted using a weighted average of the three most recent annual sales assessment ratio studies, divided by the total number of students in average daily membership who reside within the county.
- (3) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).
- (4) "State adjusted property tax base per student" means the sum of all county adjusted property tax bases divided by the total number of students in average daily membership who reside within the State.
- (5) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

Requested by: Representatives Payne, Fussell, Barnes, Senators Ward, Warren

-----SUPPLEMENTAL FUNDING

Sec. 201.2. (a) The General Assembly finds that it is appropriate to provide supplemental funds in low-wealth counties to allow those counties to enhance the instructional program and student achievement; therefore, of the funds appropriated to the Department of Public Education, the sum of \$6,000,000 for the 1991-92 fiscal year and the sum of \$6,000,000 for the 1992-93 fiscal year shall be used for supplemental funds for schools. The State Board of Education shall allocate these funds to the counties in which the adjusted property tax base per student for that county is less than the State average adjusted property tax base per student. The amount each such county receives shall be its pro rata share of the funds appropriated for supplemental funding in this act, computed as follows:

- (1) Divide the county adjusted property tax base per student by the State adjusted property tax base per student:

- (2) Multiply the resulting amount by the State average current expense appropriations per student;
- (3) Subtract the resulting amount per student from the State average county current expense appropriations per student; and
- (4) Multiply the resulting amount by the average daily membership of students in the county.

The funds a county receives shall be allocated to each local school administrative unit, located in whole or in part in the county, based on the average daily membership of the county's students in the school units.

This formula is solely a basis for distribution of supplemental funding for low-wealth counties and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for low-wealth counties.

(b) Funds received pursuant to this section shall be used only to provide instructional positions, instructional support positions, teacher assistant positions, clerical positions, and instructional supplies and equipment.

(c) Nonsupplant Requirement. -- A county in which a local school administrative unit receives funds under this section shall use the funds to supplement and not supplant existing State and local funding for public schools.

The Local Government Commission shall analyze the budgets and the expenditures of school administrative units that receive funds under this section in light of their budgets and expenditures for the previous year and shall determine whether those funds were used to supplement and not supplant State and local funding for public schools. The Local Government Commission shall report the results of its study to the State Board of Education, to the Joint Legislative Education Oversight Committee, and to the Appropriations Committees of the Senate and the House of Representatives, prior to May 1, 1992, and May 1, 1993.

(d) Definitions. -- As used in this act:

- (1) "Average daily membership" means the final average daily membership in the most recent year for which county current expense appropriations and adjusted property tax valuations are available.
- (2) "County adjusted property tax base per student" means the total assessed property valuation for each county, adjusted using a weighted average of the three most recent annual sales assessment ratio studies, divided by the total number of

students in average daily membership who reside within the county, and further adjusted using the ratio of the county's per capita income to the State average per capita income.

- (3) "Effective county tax rate" means the actual county tax rate multiplied by a weighted average of the three most recent annual sales assessment ratio studies.
- (4) "Per capita income" means the per capita income according to the most recent report of the United States Department of Commerce, Bureau of Economic Analysis.
- (5) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).
- (6) "State adjusted property tax base per student" means the sum of all county adjusted property tax bases divided by the total number of students who reside within the State.
- (7) "State average current expense appropriations per student" means the most recent State total of county current expense appropriations to public schools, as reported by counties in the annual county financial information report to the State Treasurer, divided by the total State average daily membership for that year.
- (8) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

(e) Minimum Effort Required. -- Counties that receive funding under this section shall maintain an effective county tax rate that is at least one hundred percent (100%) of the State average effective tax in the most recent year for which data are available. Any county that fails to maintain an effective county tax rate that is at least one hundred percent (100%) of the State average effective tax in the most recent year for which data are available shall refund to the State the entire amount of its allocation under this section.

(f) Counties that receive funds under this section shall report to the State Board of Education before March 1 each year on how they are using the funds for the fiscal year. The State Board of Education

shall report to the Joint Legislative Education Oversight Committee prior to May 1, 1992, and May 1, 1993, on how the funds are being used.

PART 35.-----DEPARTMENT OF COMMUNITY COLLEGES

Requested by: Representatives Fussell, Payne

-----HOLD HARMLESS/COMMUNITY COLLEGES SERVING MILITARY BASES

Sec. 202. The State Board of Community Colleges may use funds available to it for the 1991-92 fiscal year to allot funds at the 1990-91 budget level to institutions whose enrollments were adversely affected by Operation Desert Storm so that those institutions can serve the returning troops. If the institutions do not need these additional funds to serve returning troops, the additional funds allotted pursuant to this section shall revert at the end of the 1991-92 fiscal year.

Requested by: Representatives Fussell, Payne, Senator Ward

-----COMMUNITY COLLEGE TUITION INCREASE

Sec. 203. The State Board of Community Colleges shall adopt tuition rates beginning in the fall quarter of 1991 in the amount of eleven dollars and fifty cents (\$11.50) per credit hour up to a cap of 14 credit hours for in-State students and one hundred seven dollars and fifty cents (\$107.50) per credit hour with a cap of 14 hours for out-of-State students.

The State Board of Community Colleges shall adopt tuition rates beginning in the fall quarter of 1991 in the amount of thirty dollars (\$30.00) per course for occupational extension courses.

PART 36.-----COLLEGES AND UNIVERSITIES

Requested by: Representatives Payne, Fussell

-----NURSE MIDWIFERY FUNDS

Sec. 204. Of the funds appropriated to the Board of Governors of The University of North Carolina in this Title, \$95,000 for the 1991-92 fiscal year and \$95,000 for the 1992-93 fiscal year shall help fund a nurse midwifery education program at East Carolina University that will help fill the needs of the obstetrically underserved populations of the State. The program shall offer multiple track options for participating nurses; the multiple track options shall take into consideration the varying degrees of preparation. The program shall prepare participants for certification as nurse midwives. In order to maximize the impact of the training program on service provision to obstetrically underserved populations, an advisory committee shall be

established and composed of a nurse midwife and a physician providing obstetrical services to a medically underserved population, two members of the Division of Maternal and Child Health, Department of Environment, Health, and Natural Resources, and two members of the Office of Rural Health and Resource Development, Department of Human Resources. This committee shall review all applicants to identify priority candidates who will meet the needs of the State's obstetrically underserved populations for consideration by the midwifery admissions committee. The advisory committee will also facilitate and promote the recruitment of interested nurses who have a commitment to practice in obstetrically underserved areas.

Requested by: Representatives Payne, Fussell, Senator Ward
-----"OTHER" CATEGORY OF HEALTH AFFAIRS STUDENTS
FUNDING LIMITS

Sec. 205. The Board of Governors of The University of North Carolina shall not provide any additional enrollment increase funds for growth in the "Other" category for continuing education in the Health Affairs budget code at the University of North Carolina at Chapel Hill until the fees budgeted for this category are increased to cover a greater proportion of the costs per contact hour.

Requested by: Representatives Nesbitt, Diamont, Senator Ward
-----UNC ENROLLMENT/FACULTY

Sec. 206. In its allocation of the funds provided to the Board of Governors of The University of North Carolina for enrollment increases, the Board shall consider the impact of the changes in the student faculty ratio on each campus and shall use up to a maximum of \$500,000 per campus to ensure that no campus has to reduce the number of budgeted teaching positions below the number budgeted for the 1990-91 academic year. This section shall not apply to professional schools with separate budget codes or separate purposes within budget codes.

Requested by: Senator Basnight
-----UNIVERSITY OF NORTH CAROLINA EVENT FEES
AUTHORITY

Sec. 206.1. The Chancellor and Board of Trustees of each of the constituent institutions of The University of North Carolina may adopt rules to allow each constituent institution to charge an admission fee of up to one dollar (\$1.00) for any extra-curricular event that takes place in any facility of the institution. Funds generated from these fees shall be used by each institution for books and other materials for the libraries at that institution.

Requested by: Representatives Hackney, Barnes, Payne, Fussell,
Senators Basnight, Lee, Ward, Warren

-----UNC FISCAL ACCOUNTABILITY/FLEXIBILITY

Sec. 206.2. (a) Chapter 116 of the General Statutes is amended by adding new sections to read:

" § 116-44.6. Special responsibility constituent institutions.

The Board of Governors of The University of North Carolina, acting on recommendation made by the President of The University of North Carolina after consultation by him with the State Auditor, may designate one or more constituent institutions of The University as special responsibility constituent institutions. That designation shall be based on an express finding by the Board of Governors that each institution to be so designated has the management staff and internal financial controls that will enable it to administer competently and responsibly all additional management authority and discretion to be delegated to it. The Board of Governors, on recommendation of the President, shall adopt rules prescribing management staffing standards and internal financial controls and safeguards, including the lack of any significant exceptions or audit findings in the annual financial audit by the State Auditor's Office, that must be met by a constituent institution before it may be designated a special responsibility constituent institution and must be maintained in order for it to retain that designation. These rules shall not be designed to prohibit participation by a constituent institution because of its size.

" § 116-44.7. Appropriations to special responsibility constituent institutions.

All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143-23(a1), each special responsibility constituent institution may expend the General Fund monies so appropriated to it in the manner deemed by the Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are requests of other constituent institutions. The quarterly allotment procedure established pursuant to G.S.143-17 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded,

reported, and audited in the same manner as are General Fund appropriations to other constituent institutions.

" § 116-44.8. Reversions.

Of the General Fund current operations appropriations credit balance remaining in each budget code of a special responsibility constituent institution at the close of a fiscal year, any amount greater than the percentage of the General Fund appropriations historically reverted to the State treasury over the preceding five fiscal years, multiplied by the General Fund appropriations for that budget code, may be carried forward by the institution to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this section shall not exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The historic reversion percentage shall be determined by the Director of the Budget, after making adjustments for allotment reductions made to meet revenue shortfalls and to force credit balances during the preceding five fiscal years under the authority set forth in G.S. 143-25. Any special responsibility constituent institution that does not revert a percentage of the General Fund appropriations for the budget code equal to the five-year historic reversion rate established in this section shall cease to be a special responsibility constituent institution unless the Board of Governors finds that the low reversion rate is due to adverse and unforeseen conditions. In this instance, the Board may allow the institution to remain a special responsibility constituent institution for one year to come into conformity with this section. The Board may make this exception only one time for any special responsibility constituent institution, and shall report these exceptions to the Joint Legislative Commission on Governmental Operations.

" § 116-44.9. Position management.

The Chancellor of a special responsibility constituent institution, when he finds that to do so would help to maintain and advance the programs and services of the institution, may establish and abolish positions, acting in accordance with:

- (1) State Personnel policies and procedures if these positions are subject to the State Personnel Act and if the institution is operating under the terms of a Performance Agreement or a Decentralization Agreement authorized under Chapter 126 of the General Statutes; or
- (2) Policies and procedures of the Board of Governors if these positions are exempt from the State Personnel Act.

The results achieved by establishing and abolishing positions pursuant to the conditions set forth in subdivision (1) of this section shall be subject to postauditing by the Office of State Personnel.

Implementation of personnel actions shall be subject to the availability of funds within the institution's current budget to fund the full annualized costs of these actions.

" § 116-44.10. Impact on education.

The Board of Governors shall require each special responsibility constituent institution to include in its institutional effectiveness plan those assessment measures that are determined by the Board to be measures that will assure some standard measure of student learning and development in general undergraduate education at the special responsibility constituent institutions. The intent of this requirement is to measure the impact of G.S. 116-44.6 through G.S. 116-44.11, establishing and administering special responsibility constituent institutions, and their implementation on undergraduate student learning and development."

(b) G.S. 143-53.1 reads as rewritten:

" § 143-53.1. Setting of benchmarks; increase by Secretary.

On and after July 1, 1990, the expenditure benchmark prescribed by G.S. 143-52 with respect to competitive bid procedures and the bid value benchmark authorized by G.S. 143-53(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ten thousand dollars (\$10,000): provided, the Secretary of Administration may, in his discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, 1992, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be twenty-five thousand dollars (\$25,000) on and after July 1, 1991."

(c) Report of Results. The Board of Governors shall report quarterly on its decisions and directives implementing this section to the Joint Education Oversight Committee. The Board shall report to the 1993 General Assembly by March 31, 1994, on the fiscal savings, management initiatives, increased efficiency and effectiveness, and other outcomes made possible by the flexibility provided by this section to the special responsibility constituent institutions. The report shall include documentation of any reallocation of resources, the use of nonreverted appropriations, and any additional costs incurred. The Board shall require annual reports from the special responsibility constituent institutions, and shall recommend any changes needed in this section to the 1991 General Assembly, Regular Session 1992, or to the 1993 General Assembly.

(d) G.S. 116-37 is amended by inserting a new subsection to read:

"(e1) Finances -- Patient/Hospital Benefit. -- The Executive Director of the University of North Carolina Hospitals at Chapel Hill or the Director's designee, may expend operating budget funds, including State funds, of the University of North Carolina Hospitals at Chapel Hill for the direct benefit of a patient, when, in the judgment of the Executive Director or the Director's designee, the expenditure of these funds would result in a financial benefit to the University of North Carolina Hospitals at Chapel Hill. Any such expenditures are declared to result in the provision of medical services and create charges of the University of North Carolina Hospitals at Chapel Hill for which the hospitals may bill and pursue recovery in the same way as allowed by law for recovery of other hospitals' charges for services that are unpaid.

These expenditures shall be limited to no more than seven thousand five hundred dollars (\$7,500) per patient per admission and shall be restricted (i) to situations in which a patient is financially unable to afford ambulance or other transportation for discharge; (ii) to afford placement in an after-care facility pending approval of third party entitlement benefits; (iii) to assure availability of a bed in an after-care facility after discharge from the hospitals; (iv) to secure equipment or other medically appropriate services after discharge; (v) or to pay health insurance premiums. The Executive Director or the Director's designee shall reevaluate at least once a month the cost-effectiveness of any continuing payment on behalf of a patient.

To the extent that the University of North Carolina Hospitals at Chapel Hill advance anticipated government entitlement benefits for a patient's benefit, for which the patient later receives a lump sum 'backpay' award from an agency of the State, whether for the current admission or subsequent admission, the State agency shall withhold from this backpay an amount equal to the sum advanced on the patient's behalf by the University of North Carolina Hospitals at Chapel Hill, if, prior to the disbursement of the backpay, the applicable State program has received notice from the University of North Carolina Hospitals at Chapel Hill of the advancement."

(e) The Executive Director of the University of North Carolina Hospitals at Chapel Hill shall report annually to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on the fiscal results of subsection (d) of this section.

(f) This section is effective upon ratification. This section expires June 30, 1994.

Requested by: Senator Daniel

-----UNC EDUCATIONAL CONSORTIA

Sec. 206.3. Of the funds appropriated to the Board of Governors of The University of North Carolina in this Title, \$450,000 in each year of the 1991-93 fiscal biennium shall be allocated by the Board to establish cooperative educational consortia at Western Carolina University, the University of North Carolina at Greensboro, and the University of North Carolina at Wilmington. These consortia shall link elementary and secondary education, higher education, and leadership in the business sector to:

- (1) Improve education practices and enhance economic development;
- (2) Focus research capabilities on educational issues and economic problems;
- (3) Provide momentum for restructuring of public education to meet the requirements of the modern era;
- (4) Seek grants and other funds for model projects on promising educational practices;
- (5) Provide training, educational, and leadership development opportunities; and
- (6) Provide other initiatives leading to improvements in education and economic development.

PART 37.-----DEPARTMENT OF TRANSPORTATION

Requested by: Representative Nesbitt

-----LEGISLATIVE SERVICES COMMISSION TO PAY FOR CHAIRMEN OF TRANSPORTATION SUBCOMMITTEE OF THE HOUSE APPROPRIATIONS COMMITTEE TO ATTEND HIGHWAY OVERSIGHT COMMITTEE MEETINGS

Sec. 207. The Legislative Services Commission shall pay the costs of the attendance of the Chairmen of the Transportation Subcommittee of the House Appropriations Committee at all meetings of the Joint Legislative Highway Oversight Committee. These subsistence and travel expenses shall be as provided in G.S. 120-3.1.

Requested by: Representative Holt

-----BIENNIAL BILLBOARD REPORT BY DEPARTMENT OF TRANSPORTATION

Sec. 208. The Department of Transportation shall make a biennial report to the General Assembly beginning on January 1, 1993, on its Off-Premise Sign Regulatory Program.

The report shall include:

- (1) The number of off-premise signs (billboards) that conform with State and local regulations and the number of off-premise signs that do not conform with State and local regulations in each county along federal-aid primary highways.
- (2) The number of conforming and nonconforming off-premise signs on State-owned railroad right-of-way.
- (3) The number of nonconforming off-premise signs removed during the fiscal year.
- (4) The number of permitted tree cuttings and the number of illegal tree cuttings in front of off-premise signs.
- (5) Expenses incurred in regulating off-premise signs and receipts from application and renewal permit fees.

Requested by: Representative McLaughlin

-----MAINTENANCE OF STATE HIGHWAY BRIDGES

Sec. 209. G.S. 136-97(b) reads as rewritten:

"(b) The Department of Transportation, as part of maintaining the highways, bridges, and watercourses of this State, ~~shall~~ may haul all debris removed from on, under, or around a bridge to an appropriate disposal site for solid waste, where the debris shall be disposed of in accordance with law. ~~This requirement may be waived when bridge closure has an adverse impact on public safety or creates a significant hardship to the traveling public by restricting all access or necessitating a significant detour. In these instances, the minimum amount of debris which must be removed to restore service may be passed downstream.~~"

Requested by: Representative McLaughlin

-----DEPARTMENT OF TRANSPORTATION FINANCIAL AND OPERATIONAL AUDIT

Sec. 210. (a) The State Auditor shall conduct a financial and operational audit of two Highway Divisions. The audit shall:

- (1) List the functions performed by the Division offices. Calculate the percentage of time spent on each major category of maintenance and construction work;
- (2) Analyze the equipment used in the Highway Divisions, with an emphasis on the amount of rental equipment utilized;
- (3) Study the staffing levels for construction and maintenance operations. Report on the ratio of workers to supervisors. Review Department of Transportation procedures and criteria for establishing the size of maintenance crews;
- (4) Study whether construction and maintenance activities are being properly charged to appropriate accounts; and

- (5) Determine how maintenance workers are used during cold weather months and periods of inclement weather.
- (b) The Fiscal Research Division shall cooperate with and assist the State Auditor in accomplishing this audit.
- (c) The audit shall be completed by May 1, 1992.

Requested by: Senator Plyler

-----SECONDARY ROAD PROJECTS

Sec. 210.1. Chapter 136 of the General Statutes is amended by adding a new section to read:

" § 136-44.2C. *Special appropriations for State construction.*

Special appropriations for the construction of State highways may be used for the planning, design, right-of-way acquisition, and construction of highway projects for the State Highway System and Federal Aid System, including secondary roads, contained in the Transportation Improvement Program prepared pursuant to G.S. 143B-350(f)(4). Funding from the special appropriations used for secondary road projects in the Transportation Improvement Program is not subject to the allocation formula and restrictions of G.S. 136-44.2, 136-44.2A, or 136-44.5."

Requested by: Senators Basnight, Plyler

-----AIR CARGO AUTHORITY FUNDS

Sec. 210.2. Of the funds appropriated for the 1991-92 fiscal year in this Title from the Highway Fund to the reserve for Air Cargo Authority, \$400,000 shall be transferred to the Department of Economic and Community Development, for the 1991-92 fiscal year, to provide promotion and marketing of the Global Air Cargo Industrial Complex. Funds transferred pursuant to this section shall be used for advertising, travel, and related expenses.

PART 38.-----DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Requested by: Representatives Redwine, Anderson, Senators Marvin, Odom

-----HIGHWAY PATROL SALARIES

Sec. 211. Notwithstanding G.S. 20-187.83, the salary increase provided by G.S. 20-187.23 is suspended for the 1991-92 fiscal year.

Requested by: Representatives Redwine, Anderson, Jeffus, Senators Marvin, Odom

-----SUMMIT HOUSE

Sec. 211.1. Of the funds appropriated to the Department of Crime Control and Public Safety for the 1991-92 fiscal year, the sum of \$165,000 shall be used to support the program at Summit House, a community-based residential alternative to incarceration for mothers and pregnant women convicted of nonviolent crimes. Summit House shall report quarterly to the Joint Legislative Commission on Governmental Operations on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who have their probation revoked, and the number of clients who successfully complete the program while housed at Summit House.

PART 39.-----JUDICIAL DEPARTMENT

Requested by: Representatives Redwine, Anderson, Senator Marvin
-----SALARIES/ASSISTANT AND DEPUTY CLERKS OF
SUPERIOR COURT

Sec. 212. Notwithstanding the provisions of G.S.7A-102(c), assistant clerks and deputy clerks of superior court shall not receive any automatic increment during the 1991-92 fiscal year.

PART 40.-----DEPARTMENT OF HUMAN RESOURCES

Requested by: Representatives Easterling, Nye, Senator Richardson
-----MENTAL HEALTH, DEVELOPMENTAL DISABILITIES,
AND SUBSTANCE ABUSE SERVICES FUNDS

Sec. 213. (a) Of the funds appropriated in this Title to the Department of Human Resources, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, \$6,000,000 for the 1991-92 fiscal year and \$6,000,000 for the 1992-93 fiscal year shall be expended in accordance with the Mental Health Study Commission Plans adopted by the General Assembly, in the following amounts:

- | | |
|--|--------------|
| (1) Services for the mentally ill; | \$1,730,000 |
| (2) Services for the developmentally disabled; | \$1,960,000 |
| (3) Services for substance abusers. | \$2,310,000. |

(b) Of the funds allocated in subsection (a) of this section for Services for the developmentally disabled, \$230,000 shall be transferred in the 1991-92 fiscal year and \$230,000 in the 1992-93 fiscal year to the Department of Environment, Health, and Natural

Resources, Division of Maternal and Child Health, for the United Cerebral Palsy therapeutic preschools.

Requested by: Representatives Easterling, Nye, Diamont, Senator Richardson

-----MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES FUNDS/SUBSTANCE ABUSE TREATMENT PROGRAMS FOR PREGNANT WOMEN

Sec. 214. (a) Effective January 1, 1992, of the funds appropriated in this Title to the Department of Human Resources, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, \$400,000 for the 1991-92 fiscal year and \$800,000 for the 1992-93 fiscal year shall be used to set up two regional residential and outpatient treatment programs for pregnant women who abuse drugs or alcohol. These programs shall be operated by public or private nonprofit agencies and shall include case management services, transportation, day care, prevention, residential placement, outpatient services, and money for household start-up costs. Outpatient services shall be located in a public health department, community, migrant or rural health center, hospital, or other agency that provides prenatal care.

(b) Effective July 1, 1991, of the funds appropriated in this Title to the Department of Human Resources, Division of Mental Health, Mental Retardation, and Substance Abuse Services, \$220,000 for the 1991-92 fiscal year and \$220,000 for the 1992-93 fiscal year shall be used to continue support for the residential and outpatient treatment center located in Robeson County.

Requested by: Representatives Nye, Easterling, McLaughlin, Senator Richardson

-----STATE SUBSIDY/COUNTY DETENTION HOME

Sec. 215. (a) G.S. 134A-38 reads as rewritten:

" § 134A-38. *State subsidy to county detention homes.*

The Department shall develop a State subsidy program to pay a county detention home which provides regional juvenile detention services and meets State standards a certain portion of its operating cost and its per capita daily cost per diem per child for any child cared for from another county as recommended in said report. In general, this subsidy per diem should be fifty percent (50%) of the operating costs of a county detention home and one hundred percent (100%) of the per capita daily cost total cost of caring for a child from another county; any county placing a child in the county detention home of another county providing regional juvenile detention services or a regional detention home should pay fifty percent (50%) of the per

~~capita daily cost of caring for the child to the Department, from within the county and 100 percent (100%) of the total cost of caring for a child from another county. Any county placing a child in a detention home in another county shall pay fifty percent (50%) of the total cost of caring for the child to the Department.~~ The exact funding formulas may be varied by the Department to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care."

(b) Of the funds appropriated to the Department of Human Resources, Division of Youth Services in this Title, \$500,000 for the 1991-92 fiscal year and \$500,000 for the 1992-93 fiscal year shall be used to implement this section.

Requested by: Representatives Easterling, Nye, Diamont, Senator Richardson

-----COUNTY PROTECTIVE SERVICES ALLOCATION

Sec. 216. Of the funds appropriated to the Department of Human Resources, Division of Social Services, in this Title, \$3,250,000 for the 1991-92 fiscal year and \$7,000,000 for the 1992-93 fiscal year shall be allocated to county departments of social services beginning January 1, 1992, according to the following formula:

- (1) All county departments shall receive a base allocation of \$10,000 for the 1991-92 fiscal year and \$10,000 for the 1992-93 fiscal year.
- (2) The balance of the funds each year of the fiscal biennium shall be allocated to each county department based upon the percentage of the number of child abuse and neglect reports in that county compared to the total number of reports of child abuse and neglect statewide. These percentages shall be computed from the reports received by the Division of Social Services' Central Registry of Abuse and Neglect for the last two fiscal years.

Funds allocated to county departments of social services pursuant to this subsection shall be used to provide additional staff to carry out investigations of reports of child abuse or neglect or to provide protective or preventive services in cases in which the department confirms neglect, abuse, or dependency. However, if a county demonstrates to the Division of Social Services that it has adequate protective services staff, that county department may use these allocated funds to purchase or provide treatment or other support services to children and their families in confirmed cases of child abuse, neglect, or dependency. All expenditures made by any county department of social services from funds allocated pursuant to this

subsection shall be in direct support of the department's program of protective services for children. These funds shall not be used to supplant any Social Services Block Grant funds or county appropriations budgeted for protective services for children.

The Department of Human Resources, Division of Social Services, shall establish guidelines and criteria to assure that the allocations to county departments of social services pursuant to this subsection are used in accordance with the intent and purpose of this subsection.

The Division of Social Services shall prepare a report on the progress achieved in improving child protective services throughout the State. The report shall include an analysis of county staffing patterns, future county staffing and funding requirements needed to meet the Division's recommended guidelines, and analysis of the barriers to recruitment and retention of county child protective services staff, and a summary of the Division's progress in implementing improvements to the State's training and oversight responsibilities. The Division shall present this report to the 1991 General Assembly, to the Fiscal Research Division, and to the North Carolina Child Fatality Task Force established pursuant to Article 62 of Chapter 143 of the General Statutes by March 15, 1992.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----DEPARTMENT OF HUMAN RESOURCES PHARMACY
STUDY

Sec. 218. The Department of Human Resources shall contract for a survey study to determine the cost of filling a prescription in North Carolina. The Department shall consider the impact of refills on the dispensing fee and any other issues it considers necessary and shall implement appropriate adjustments to the pharmacy dispensing fee in the State Medicaid Plan based on the outcome of the study if the Department identifies funds available to it sufficient for the implementation. The Department shall include in its adjustments the adjustment of the fee annually to reflect appropriate inflationary increases as established in nationally recognized pricing indexes.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----PHARMACY DISPENSING FEE INCREASE

Sec. 219. Effective January 1, 1992, the professional limits fee for dispensing drugs shall be \$5.60 per prescription, adjusted in accordance with subdivision (5) of Section 93, Title 1, of this act.

Requested by: Representatives Diamont, Nye, Easterling, Senator Richardson

-----PURCHASE TRANSPORTATION SERVICES FOR PREGNANT WOMEN AND CHILDREN ON MEDICAID

Sec. 220. (a) Of the funds appropriated from the General Fund to the Department of Human Resources, in this Title, \$300,000 for the 1991-92 fiscal year and \$300,000 for the 1992-93 fiscal year shall be transferred to the Department of Transportation, Public Transportation Division, to purchase transportation services for pregnant women and children on Medicaid. All funds distributed by the Department, under this section, to counties are intended to purchase additional transportation services and not to supplant funds now being used by local governments for that purpose. These funds are not to be used towards the purchase of transportation vehicles or equipment, and may not be used to cover State administrative costs. Only those counties maintaining Medicaid transportation services to pregnant women and children at a level that is not reduced from the level of services in place during the 1989-90 fiscal year shall be eligible for additional transportation assistance funds.

(b) The Public Transportation Division of the Department of Transportation shall distribute these funds to the counties according to the following formula:

- (1) Fifty percent (50%) divided equally among all eligible counties;
- (2) Forty-five percent (45%) on the basis of the number of pregnant women and children receiving Medicaid in the county as a percentage of the total number of pregnant women and children receiving Medicaid statewide; and
- (3) Five percent (5%) based upon a population density factor that recognizes the higher transportation costs in sparsely populated counties.

The Department of Transportation shall develop appropriate procedures for the distribution and use of these funds and shall adopt rules to implement these procedures.

(c) Funds distributed by the Department of Transportation under this section shall be used by counties in a manner consistent with implemented transportation development plans which have been approved by the Department of Transportation and the board of county commissioners. To receive funds apportioned for a given fiscal year, a county shall have an approved transportation plan. Funds that are not obligated in a given fiscal year due to the lack of an approved transportation plan shall be distributed to the eligible counties based on the distribution formula in subsection (b) of this section.

(d) The Department of Transportation shall report to the Joint Legislative Commission on Governmental Operations by March 15, 1992, on the amount of money that has been received and spent by each county pursuant to this section and the new transportation services provided in each county to pregnant women and children receiving Medicaid pursuant to this section.

Requested by: Representatives Nye, Easterling, Senator Richardson
-----DOMICILIARY RATE INCREASE/EXPANSION

Sec. 221. Section 127 of Title 1 of this act reads as rewritten:
"-----DOMICILIARY RATE INCREASE

Sec. 127. Effective July 1, 1991, the maximum monthly rate for ambulatory residents in domiciliary care facilities shall be \$766.00 \$832.00 and the maximum monthly rate for semiambulatory residents shall be \$803.00, \$871.00. Effective July 1, 1992, the maximum monthly rates for ambulatory residents shall be increased to \$777.00 \$843.00 and for semiambulatory residents to \$814.00, \$882.00."

Requested by: Representatives Nesbitt, Diamont, Nye, Easterling, Senators Basnight, Plyler, Richardson

-----WAKE COUNTY DETENTION FACILITY ALLOCATION

Sec. 221.1. Of the funds appropriated from the General Fund to the Department of Human Resources, Division of Youth Services, the sum of \$400,000 for the 1991-92 fiscal year and the sum of \$400,000 for the 1992-93 fiscal year shall be used for the operation of the Wake County Detention facility as a regional detention facility.

Requested by: Representatives Easterling, Nye, Diamont, Senators Richardson, Basnight, Plyler

-----REDUCE INFANT MORTALITY

Sec. 221.2. (a) Effective October 1, 1991, the Department of Human Resources, Division of Medical Assistance, shall provide medical coverage for nutritional counselling, psycho-social counselling, and predelivery and post partum home visits by maternity care coordinators and public health nurses, for Medicaid-eligible pregnant women.

(b) Of the funds appropriated in this Title to the Department of Human Resources, Division of Medical Assistance, the sum of \$356,648 for the 1991-92 fiscal year and the sum of \$499,310 for the 1992-93 fiscal year shall be used to provide the State share of the increased coverage for services mandated by this section.

Requested by: Representatives Nye, Easterling. Senators Richardson, Basnight, Plyler

-----CHILD SUPPORT FUNDS

Sec. 221.3. (a) Notwithstanding G.S. 114-2.1, the State may enter into a consent judgment in the case of Cassell, et al. v. Flaherty, et al., C-C-90-0010-M, United States District Court for the Western District of North Carolina, Charlotte Division.

(b) The consent judgment authorized under subsection (a) of this section is subject to G.S. 114-2.2.

(c) In the event a consent agreement is reached, funds appropriated to enable the Child Support Enforcement Section, Division of Social Services, Department of Human Resources to distribute child support collections based upon the date the payment is withheld from an obligor's disposable income may be used to implement that consent judgment. Implementation costs may include:

- (1) Quarterly notices to clients;
- (2) Toll-free telephone number;
- (3) Four Account Technician II positions;
- (4) System enhancements; and
- (5) Court-ordered costs.

(d) The Office of State Budget and Management and the Department of Human Resources shall provide quarterly reports on expenditures authorized under this section to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.

(e) The Office of State Budget and Management and the Department of Human Resources shall report annually on expenditures and progress in achieving necessary improvements in the distribution of child support collection. Reports shall be submitted to the Governor, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division not later than May 1, 1992, and annually thereafter.

(f) Funds appropriated to the Department of Human Resources in this Title for covering expenses incurred as a result of the Cassell, et al. v. Flaherty, et al. lawsuit shall be deposited in a nonreverting fund account in the Department of Human Resources, Division of Social Services, that the Department shall establish for this purpose. Any unexpended and unencumbered funds remaining in the nonreverting account on July 1, 1995, shall revert to the General Fund on that date. If the State has not entered into a consent judgment as authorized under this section by September 1, 1991, then this section shall expire on September 1, 1991, and all funds appropriated in this act for this purpose shall revert to the General Fund.

Requested by: Senators Plyler, Walker

-----HIGHWAY VENDING PROFITS/MEDICAL EYE CARE

Sec. 221.4. (a) G.S. 111-43 reads as rewritten:

" § 111-43. *Installation of coin-operated vending machines.*

In locations where the Department determines that a vending facility may not be operated or should not continue to operate due to insufficient revenues, the Department shall have the first opportunity to secure, by negotiation of a contract with one or more licensed commercial vendors, coin-operated vending machines for the location. Profits from coin-operated vending machines secured by the Department shall be used by the Department for the support of vending facilities operated by the visually ~~handicapped~~, handicapped, except for up to \$300,000 of the highway vending profits each fiscal year that may be used to support the Medical Eye Care Program and to provide needed technological equipment and related activities within the Division."

(b) This section expires June 30, 1992.

PART 41.-----DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Requested by: Representatives Nesbitt, Diamont, Senator Basnight

-----VISITOR AND WELCOME CENTER FUNDS

Sec. 222. (a) Before any other transfers are made pursuant to G.S. 20-81.3(c) or 20-81.3(g), the Secretary of Transportation shall allocate from the "Personalized Registration Plate Fund" \$150,000 for the 1991-92 fiscal year and \$150,000 for the 1992-93 fiscal year for personnel to staff Visitor and Welcome Centers as follows:

- (1) \$50,000 for the 1991-92 fiscal year and \$50,000 for the 1992-93 fiscal year to the Albemarle Regional Planning and Development Office in the Town of Hertford for the Visitor and Welcome Center on U.S. Highway 17 in Camden County;
- (2) \$50,000 for the 1991-92 fiscal year and \$50,000 for the 1992-93 fiscal year to the Southeastern Welcome Center, Inc., for the Visitor and Welcome Center on U.S. Highway 17 South in Brunswick County;
- (3) \$25,000 for the 1991-92 fiscal year and \$25,000 for the 1992-93 fiscal year to Smoky Mountain Hosts of North Carolina, Inc., for the Visitor and Welcome Center on U.S. Highway 441 in Macon County; and
- (4) \$25,000 for the 1991-92 fiscal year and \$25,000 for the 1992-93 fiscal year to the North Carolina High Country

Host, Inc., for personnel to staff the Visitor and Welcome Center in the Town of Boone, Watauga County.

(b) If the Visitor and Welcome Center in Brunswick County is under construction as of the effective date of this act, the Board of Transportation shall ensure that construction of the Center is completed by September 1, 1991. The Secretary of Transportation shall implement the allocations required under this section as expeditiously as possible, and shall take no adverse action against any of the above named centers for having received State funds pursuant to an act of the General Assembly.

(c) This section expires June 30, 1993.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----PETROLEUM OVERCHARGE FUNDS ALLOCATION

Sec. 223. (a) The funds and interest thereon received from the case of United States v. Exxon are deposited in the Special Reserve for Oil Overcharge Funds. There is appropriated from the Special Reserve to the Department of Economic and Community Development the sum of \$10,900,000 for the 1991-92 fiscal year and the sum of \$6,001,511 for the 1992-93 fiscal year to be allocated as follows:

- (1) \$2,200,000 for the 1991-92 fiscal year and \$1,200,302 for the 1992-93 fiscal year shall be used for projects under the State Energy Conservation Plan and Energy Extension Service Program;
- (2) \$2,500,000 for the 1991-92 fiscal year and \$1,380,348 for the 1992-93 fiscal year shall be used for energy conservation programs for hospitals and schools;
- (3) \$3,200,000 for the 1991-92 fiscal year and \$1,740,438 for the 1992-93 fiscal year shall be used for the Low Income Weatherization Program;
- (4) \$3,000,000 for the 1991-92 fiscal year and \$1,680,423 for the 1992-93 fiscal year shall be used for the Low Income Home Energy Assistance Program (LIHEAP).

(b) There is appropriated from the funds and interest thereon received from the United States Department of Energy's Stripper Well Litigation (MDL378) which remain in the Special Reserve for Oil Overcharge Funds to the Department of Economic and Community Development the sum of \$4,898,489 for the 1992-93 fiscal year to be allocated as follows:

- (1) \$999,698 shall be used for projects under the State Energy Conservation Plan and Energy Extension Service Program;
- (2) \$1,119,652 shall be used for energy conservation programs for hospitals and schools;

- (3) \$1,459,562 shall be used for the Low Income Weatherization Program; and
- (4) \$1,319,577 shall be used for the Low Income Home Energy Assistance Program (LIHEAP).

(c) Any funds remaining in the Special Reserve for Oil Overcharge Funds after the allocations made pursuant to subsections (a) and (b) of this section may be expended only as authorized by the General Assembly. All interest or income accruing from all deposits or investments of cash balances shall be credited to the Special Reserve for Oil Overcharge Funds.

(d) The funds and interest thereon received from the Diamond Shamrock Settlement which remain in a reserve in the Office of State Budget and Management for the Division of Energy to administer the petroleum overcharge funds pursuant to Section 112 of Chapter 830 of the 1987 Session Laws shall continue to be available to the Division of Energy in the Department of Economic and Community Development on an as-needed basis.

(e) The Department of Economic and Community Development shall submit comprehensive annual reports to the General Assembly by May 15, 1992, and January 31, 1993, which detail the use of all petroleum overcharge funds. Any State department or agency that has received petroleum overcharge funds shall provide all information requested by the Department of Economic and Community Development for the purpose of preparing these reports.

Requested by: Representatives Ethridge, H. Hunter

-----ECONOMIC DEVELOPMENT FUNDS

Sec. 224. (a) Of the funds appropriated in this Title to the North Carolina Rural Economic Development Center, Inc., \$1,400,000 for the 1991-92 fiscal year, shall be allocated to local community development corporations. These funds shall be used to support community economic development projects and activities within the State's minority community.

Of these funds, \$1,050,000 shall be used for direct grants to the 17 local community development corporations that have previously received State funds for this purpose to support operations and project activities. \$150,000 shall be used for direct grants to community development corporations that have not previously received State funds for this purpose. \$50,000 shall be used for the Community Development Housing Counselling Demonstration Project, and \$150,000 shall be used for the North Carolina Association of Community Development Corporations and shall be matched on the basis of one dollar of non-State funds for every one dollar of State funds. The Association shall not use these funds for administrative

expenses, including salaries. If these matching funds are not matched before the end of the 1991-92 fiscal year, they shall be used during the 1992-93 fiscal year for direct grants to local community development corporations. If funds allocated under this paragraph for direct grants to Community Development Corporations that have not previously received State funds have not been committed for direct grants by the Rural Economic Development Center by March 31, 1992, then such uncommitted funds shall be used for direct grants to Community Development Corporations that have previously received State funds.

The North Carolina Rural Economic Development Center, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of the funds allocated in this subsection.

For purposes of this subsection, the term "community development corporation" means a nonprofit corporation, chartered pursuant to Chapter 55A of the General Statutes and tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code, whose primary mission is to develop and improve low-income communities and neighborhoods through economic and related development, whose activities and decisions are initiated, managed, and controlled by their constituencies, and whose primary function is to act as deal maker and packager of projects and activities that will increase their constituencies' opportunities to become owners, managers, and producers.

(b) Of the funds appropriated in this Title to the Office of State Budget and Management, \$300,000 for the 1991-92 fiscal year shall be allocated for Land Loss Prevention Project, Inc., to provide free legal representation to low-income financially distressed small farmers. The Land Loss Prevention Project, Inc., shall not use these funds to represent farmers who have income and assets that would make them financially ineligible for legal services pursuant to Title 45, Part 1611 of the Code of Federal Regulations. The Land Loss Prevention Project, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of these funds.

(c) Of the funds appropriated in this Title to the Office of State Budget and Management, \$250,000 for the 1991-92 fiscal year shall be allocated for the North Carolina Coalition of Farm and Rural Families, Inc., for its Small Farm Economic Development Project. These funds shall be used to foster economic development within the State's rural farm communities by offering financial, marketing, and technical assistance to small and limited resource farmers. The North Carolina Coalition of Farm and Rural Families, Inc., shall

report quarterly to the Joint Legislative Commission on Governmental Operations on the use of these funds.

(d) Of the funds appropriated in this Title to the Office of State Budget and Management, \$200,000 for the 1991-92 fiscal year shall be allocated to the North Carolina Institute for Minority Economic Development, Inc., to foster minority economic development within the State through policy analysis, information and technical assistance, and resource expansion. The North Carolina Institute for Minority Economic Development, Inc., shall research and identify key issues affecting the economic well-being of the State's ethnic minority community and issue annual reports with appropriate recommendations; provide information and technical assistance to organizations with minority economic development-based projects in common areas of need and interests; develop a resource bank of data and information to strengthen minority economic development initiatives; and facilitate training in appropriate areas of need. The North Carolina Institute for Minority Economic Development, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of these funds.

(e) Of the funds appropriated in this Title to the North Carolina Rural Economic Development Center, Inc., \$1,000,000 for the 1991-92 fiscal year shall be allocated to local minority-owned and operated credit unions and to the North Carolina Minority Credit Union Support Center, Inc. These funds shall be used to foster minority economic development within the State by increasing the lending capacity of minority-owned and operated credit unions. Ninety percent (90%) of these funds shall be allocated to local minority-owned and operated credit unions for capitalization of economic development and housing loans, and ten percent (10%) of these funds shall be allocated to the North Carolina Minority Credit Union Support Center, Inc., for operational and administrative support. The North Carolina Rural Economic Development Center, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of these funds.

(f) Of the funds appropriated in this Title to the North Carolina Rural Economic Development Center, Inc., \$650,000 for the 1991-92 fiscal year shall be used to expand the Microenterprise Loan Program. Of these funds, no less than \$400,000 shall be used as loan loss reserves and no more than \$250,000 shall be used to cover operational costs. These funds are to be matched on the basis of two dollars of non-State funds for every one dollar of State funds. The North Carolina Rural Economic Development Center, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of these funds.

(g) Of the funds appropriated in this Title to the North Carolina Rural Economic Development Center, Inc., \$50,000 for the 1991-92 fiscal year shall be used for its expenses in administering this section. The Office of State Budget and Management shall allot the funds pursuant to subsections (e) and (f) of this section in increments of not less than \$200,000 and not more than \$325,000 within 30 working days of the receipt of the Center's request for the funds. Requests shall include a commitment of any required matching funds from non-State funds. The North Carolina Rural Economic Development Center, Inc., shall distribute the funds pursuant to subsections (e) and (f) of this section immediately upon allotment by the Office of State Budget and Management.

(h) The Rural Economic Development Center, Inc., shall not distribute funds under subsections (a), (e), and (f) of this section unless and until the entities eligible for funds under those subsections have met the requirements of G.S. 143-6.1.

Requested by: Representatives Ethridge, H. Hunter, DeVane, Senator Martin of Pitt

-----HOME PROGRAM FUNDING LIMIT

Sec. 225. The Department of Economic and Community Development shall not spend any funds appropriated in this Title for the State administration of the federal HOME Program until Congress appropriates federal funds for the Program.

PART 42.-----DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----EHNHR USE OF FEES

Sec. 226. (a) If the revenues received pursuant to G.S. 113A-119.1 exceed the amount in anticipated revenues from this source for the 1991-92 fiscal year or for the 1992-93 fiscal year, then the Department of Environment, Health, and Natural Resources may use up to \$30,000 of this revenue for the 1991-92 fiscal year and up to \$50,000 of this revenue for the 1992-93 fiscal year for permitting, education, and compliance activities, including salaries and necessary support, in the Division of Coastal Management. These funds are in addition to any other funds appropriated for this purpose.

(b) If the revenues received pursuant to G.S. 113A-54.2 exceed the amount in anticipated revenues from this source for the 1991-92 fiscal year or the 1992-93 fiscal year, then the Department of Environment, Health, and Natural Resources may use up to \$140,000

of this revenue for the 1991-92 fiscal year and up to \$160,000 of this revenue for the 1992-93 fiscal year for education, erosion control plan approval, and compliance activities in the Sedimentation Control Program, including salaries and necessary support, in the Division of Land Resources. These funds are in addition to any other funds appropriated for this purpose.

(c) If the revenues received pursuant to G.S. 143-215.28A exceed the amount in anticipated revenues from this source for the 1991-92 fiscal year or the 1992-93 fiscal year, then the Department of Environment, Health, and Natural Resources may use up to \$20,000 of this revenue for the 1991-92 fiscal year and up to \$20,000 of this revenue for the 1992-93 fiscal year for permitting, education, and compliance activities in the Dam Safety Program, including salaries and necessary support, in the Division of Land Resources. These funds are in addition to any other funds appropriated for this purpose.

(d) If the revenues received pursuant to G.S. 143B-290 exceed the amount in anticipated revenues from this source for the 1991-92 fiscal year or for the 1992-93 fiscal year, then the Department of Environment, Health, and Natural Resources may use up to \$40,000 of this revenue for the 1991-92 fiscal year and up to \$70,000 of this revenue for the 1992-93 fiscal year for permitting, education, and compliance activities in the Mining Program, including salaries and necessary support, in the Division of Land Resources. These funds are in addition to any other funds appropriated for this purpose.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----COMMUNITY WATER SYSTEMS PERMITS FEES

Sec. 227. There is appropriated from the General Fund to the Department of Environment, Health, and Natural Resources the sum of \$258,938 for the 1991-92 fiscal year and the sum of \$621,450 for the 1992-93 fiscal year to support the public water systems program; provided, however, if the revenues raised from Chapter 576 of the 1991 Session Laws are less than \$258,938 for the 1991-92 fiscal year or are less than \$621,450 for the 1992-93 fiscal year, then the appropriation is reduced accordingly.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----CLEAN AIR ACT PERMIT FEES

Sec. 228. There is appropriated from the Title V nonreverting account established in G.S. 143-215.3A to the Department of Environment, Health, and Natural Resources the sum of \$999,855 for the 1991-92 fiscal year and the sum of \$3,992,390 for the 1992-93

fiscal year to be used for the development and implementation of the Title V program in accordance with G.S. 143-215.3A; provided, however, if the revenues raised from Chapter 552 of the 1991 Session Laws are less than \$999,855 for the 1991-92 fiscal year or are less than \$3,992,390 for the 1992-93 fiscal year, then the appropriation is reduced accordingly.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----HAZARDOUS WASTE INSPECTORS

Sec. 229. As industry is permitted that is subject to G.S. 130A-295.02 requiring the establishment of resident inspectors, the Department of Environment, Health, and Natural Resources may request through the Office of State Budget and Management the authorization to establish new positions and support costs necessary to comply with G.S. 130A-295.02. The Department shall report these positions as a continuation item in its next biennial budget request.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----VITAL RECORDS FEES

Sec. 230. There is appropriated from the Vital Records Automation Fund established under G.S. 130A-93.1 to the Department of Environment, Health, and Natural Resources the sum of \$800,000 for the 1991-92 fiscal year and the sum of \$800,000 for the 1992-93 fiscal year, for defraying the cost of automating the vital records system; provided, however, if the revenues raised from Chapter 343 of the 1991 Session Laws are less than \$800,000 for the 1991-92 fiscal year or are less than \$800,000 for the 1992-93 fiscal year, then the appropriation is reduced accordingly.

Requested by: Representatives Ethridge, H. Hunter, Senator Martin of Pitt

-----ASBESTOSIS/SILICOSIS EXAMS FEES

Sec. 231. There is appropriated from the General Fund to the Department of Environment, Health, and Natural Resources the sum of \$112,124 for the 1991-92 fiscal year and the sum of \$119,479 for the 1992-93 fiscal year for defraying the cost of examinations for screening for asbestosis or silicosis conducted by the Department; provided, however, if the revenues raised from Chapter 481 of the 1991 Session Laws are less than \$112,124 for the 1991-92 fiscal year or are less than \$119,479 for the 1992-93 fiscal year, then the appropriation is reduced accordingly.

Requested by: Representatives Ethridge, H. Hunter, DeVane, Diamont, Senator Martin of Pitt

-----RURAL OBSTETRICAL CARE INCENTIVE PROGRAM

Sec. 232. Of the funds appropriated in this Title from the General Fund to the Department of Environment, Health, and Natural Resources, Division of Maternal and Child Health, the sum of \$300,000 for the 1991-92 fiscal year and the sum of \$300,000 for the 1992-93 fiscal year shall be used to expand the Rural Obstetrical Care Incentive Program established under Section 39.3 of Chapter 1100, 1987 Session Laws, Regular Session 1988. The Rural Obstetrical Care Incentive Program will be used to assist with the cost of malpractice insurance for family physicians, obstetricians, and certified nurse midwives who agree to provide prenatal and obstetrical services in medically underserved areas of the State. General surgeons who provide cesarean section backup to family physicians in counties where there are no obstetricians or where there are no obstetricians willing or able to provide such backup are also eligible for the program. Physicians and certified nurse midwives covered under the Rural Obstetrical Care Incentive Program are required to participate in an obstetrical care coverage plan developed by their local health department or community, migrant, or rural health center, and must agree to provide services to pregnant women regardless of their ability to pay for the services.

Requested by: Representatives Ethridge, H. Hunter, DeVane, Diamont, Senator Martin of Pitt

-----NORTH CAROLINA CHILD FATALITY PREVENTION

Sec. 233. (a) Chapter 143 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 62.

"North Carolina Child Fatality Review Team; North Carolina Child Fatality Task Force and Study.

" § 143-571. Declaration of public policy.

The General Assembly finds that it is the public policy of this State to prevent child deaths. The General Assembly further finds that the prevention of child deaths is a community responsibility; that professionals from disparate disciplines have responsibilities for children and have expertise that can promote child safety and well-being; and that multidisciplinary reviews of child deaths can lead to a greater understanding of the causes and methods of preventing these deaths. It is, therefore, the intent of the General Assembly, through this Article, to establish a multidisciplinary task force to study the incidence and causes of child deaths and to develop a mechanism for multidisciplinary child death reviews. It is further the intent of the

General Assembly that the task force, based upon its study and its expertise, make recommendations to the General Assembly and the Governor for changes to law, rule, and policy that will support the safe and healthy development of our children. It is also the intent of the General Assembly to establish a State Child Fatality Review Team to review certain child deaths.

" § 143-572. Definitions.

The following definitions apply in this Article:

- (1) Local team. A local multidisciplinary child abuse and neglect review team established for a county.
- (2) State Team. The North Carolina Child Fatality Review Team.
- (3) Task Force. The North Carolina Child Fatality Task Force.

" § 143-573. Task Force - creation; membership; vacancies.

(a) There is created the North Carolina Child Fatality Task Force within the Department of Environment, Health, and Natural Resources for budgetary purposes only.

(b) The Task Force shall be composed of 25 members, 12 of whom shall be ex officio members, three of whom shall be appointed by the Governor, and eight of whom shall be appointed by the General Assembly, four upon recommendation of the Speaker of the House of Representatives and four upon recommendation of the President Pro Tempore of the Senate. The ex officio members other than the Chief Medical Examiner may designate representatives from their particular departments, divisions, or offices to represent them on the Task Force. The members shall be as follows:

- (1) The Chief Medical Examiner;
- (2) The Attorney General;
- (3) The Director of the Division of Social Services;
- (4) The Director of the State Bureau of Investigation;
- (5) The Director of the Division of Maternal and Child Health of the Department of Environment, Health, and Natural Resources;
- (6) The Director of the Governor's Youth Advocacy and Involvement Office;
- (7) The Superintendent of Public Instruction;
- (8) The President of the State Board of Education;
- (9) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services;
- (10) The Secretary of the Department of Human Resources;
- (11) The Secretary of the Department of Environment, Health, and Natural Resources;
- (11.1) The Director of the Administrative Office of the Courts;

- (12) A director of a county department of social services appointed by the Governor upon recommendation of the President of the North Carolina Association of County Directors of Social Services;
- (13) A representative from a Sudden Infant Death Syndrome counseling and education program appointed by the Governor upon recommendation of the Director of the Division of Maternal and Child Health of the Department of Environment, Health, and Natural Resources;
- (14) A representative from the North Carolina Child Advocacy Institute appointed by the Governor upon recommendation of the President of the Institute;
- (15) A representative from a private group, other than the North Carolina Child Advocacy Institute, that advocates for children, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives upon recommendation of private child advocacy organizations;
- (16) A pediatrician, licensed to practice medicine in North Carolina, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives upon recommendation of the North Carolina Pediatric Society;
- (17) A representative from the North Carolina League of Municipalities appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives upon recommendation of the League;
- (18) Two public members appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives;
- (19) A county or municipal law enforcement officer appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate upon recommendation of organizations that represent local law enforcement officers;
- (20) A district attorney appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate upon recommendation of the President of the North Carolina Conference of District Attorneys;
- (21) A representative from the North Carolina Association of County Commissioners appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate upon recommendation of the Association; and

- (22) Two public members appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate;

(c) All members of the Task Force are voting members. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment. The Speaker of the House of Representatives shall call the first meeting no later than October 1, 1991. At the first meeting the members shall elect a chair who shall preside for the duration of the Task Force.

" § 143-574. Task Force - duties.

The Task Force shall:

- (1) Undertake a statistical study of the incidence and causes of child deaths in this State during 1988 and 1989, and establish a profile of child deaths. The study shall include (i) an analysis of all community and private and public agency involvement with the decedents and their families prior to death, and (ii) an analysis of child deaths by age, cause, and geographic distribution;
- (2) Develop a system for multidisciplinary review of child deaths. In developing such a system, the Task Force shall study the operation of existing local teams. The Task Force shall also consider the feasibility and desirability of local or regional review teams and, should it determine such teams to be feasible and desirable, develop guidelines for the operation of the teams. The Task Force shall also examine the laws, rules, and policies relating to confidentiality of and access to information that affect those agencies with responsibilities for children, including State and local health, mental health, social services, education, and law enforcement agencies, to determine whether those laws, rules, and policies inappropriately impede the exchange of information necessary to protect children from preventable deaths, and, if so, recommend changes to them;
- (3) Receive and consider reports from the State Team; and
- (4) Perform any other studies, evaluations, or determinations the Task Force considers necessary to carry out its mandate.

" § 143-575. State Team - creation; membership; vacancies.

(a) There is created the North Carolina Child Fatality Review Team within the Department of Environment, Health, and Natural Resources for budgetary purposes only.

(b) The State Team shall be composed of nine members of whom eight members are ex officio and one is appointed. The ex officio members other than the Chief Medical Examiner may designate a

representative from their departments, divisions, or offices to represent them on the State Team.

- (1) The Chief Medical Examiner, who shall chair the State Team;
- (2) The Attorney General;
- (3) The Director of the Division of Social Services;
- (4) The Director of the State Bureau of Investigation;
- (5) The Director of the Maternal and Child Health Division of the Department of Environment, Health, and Natural Resources;
- (6) The Superintendent of Public Instruction;
- (7) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services; and
- (7.1) The Director of the Administrative Office of the Courts;
- (8) The pediatrician appointed pursuant to G.S. 143-573(b)(16) to the Task Force.

(c) All members of the State Team are voting members. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment.

" § 143-576. State Team - duties.

The State Team shall:

- (1) Review current deaths of children when those deaths are attributed to child abuse or neglect or when the decedent was reported as an abused or neglected juvenile pursuant to G.S. 7A-543 at any time before death; and
- (2) Report to the Task Force during the existence of the Task Force, in the format and at the time required by the Task Force, on the State Team's activities and its recommendations for changes to any law, rule, and policy that would promote the safety and well-being of children; and
- (3) Upon request of a local team, provide technical assistance to the team.

" § 143-577. Task Force - reports.

(a) The Task Force shall provide a preliminary report to the Governor and General Assembly, within the first week of the convening of the 1992 Session of the 1991 General Assembly. This preliminary report shall contain at least a summary of preliminary conclusions and recommendations for each of the Task Force's duties, as well as any other recommendations for changes to any law, rule, and policy that it has determined will promote the safety and well-being of children. Any recommendations of changes to law, rule, or

policy shall be accompanied by specific legislative or policy proposals and detailed fiscal notes setting forth the costs to the State.

(b) The Task Force shall provide a final report to the Governor and General Assembly within the first week of the convening of the 1993 General Assembly. The final report shall include final conclusions and recommendations for each of the Task Force's duties, as well as any other recommendations for changes to any law, rule, and policy that it has determined will promote the safety and well-being of children. Any recommendations of changes to law, rule, or policy shall be accompanied by specific legislative or policy proposals and detailed fiscal notes setting forth the costs to the State.

(c) After the Task Force provides its final report to the Governor and General Assembly, the Task Force shall cease to be in existence.

" § 143-578. Access to records.

The Task Force and State Team shall have access to all medical records, hospital records, and records maintained by this State, any county, or any local agency as necessary to carry out the purposes of this Article, including police investigations data, medical examiner investigative data, health records, mental health records, and social services records. Task Force and State Team meetings are not subject to the provisions of Article 33C of Chapter 143 of the General Statutes. All otherwise confidential information and records acquired by the Task Force or State Team in the exercise of their duties are confidential; are not subject to discovery or introduction into evidence in any proceedings; and may only be disclosed as necessary to carry out the purposes of the Task Force. No member of the Task Force, State Team, or person who attends such a meeting may testify in any proceeding about what transpired at the meeting, about information presented at the meeting, or about opinions formed by the person as a result of the meetings. This section does not, however, prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.

" § 143-579. Administration; funding.

(a) To the extent of funds available, the Chairs of the Task Force and State Team may hire staff or consultants to assist the Task Force and the State Team in completing their duties.

(b) Members, staff, and consultants of the Task Force or State Team shall receive travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or G.S. 138-6, as the case may be, paid from funds appropriated to implement this Article and within the limits of those funds.

(c) With the approval of the Legislative Services Commission, legislative staff and space in the Legislative Building and the Legislative Office Building may be made available to the Task Force."

(b) The Department of Environment, Health, and Natural Resources, the Department of Human Resources, the Department of Justice, and the State Board of Education shall adopt joint rules to ensure full cooperation of these departments and related local agencies with the work of the North Carolina Child Fatality Task Force and the North Carolina Child Fatality Review Team.

(c) Of the funds appropriated in this Title to the Department of Environment, Health, and Natural Resources, \$158,000 for the 1991-92 fiscal year and \$165,000 for the 1992-93 fiscal year shall be used to implement this section. Of these funds, \$83,200 for the 1991-92 fiscal year and \$75,000 for the 1992-93 fiscal year shall be allocated to the North Carolina Child Fatality Task Force and \$74,800 for the 1991-92 fiscal year and \$90,000 for the 1992-93 fiscal year shall be allocated to the North Carolina Child Fatality Review Team.

Requested by: Representatives H. Hunter, Ethridge, DeVane, Redwine, Senator Martin of Pitt

-----DWI TEST CHANGES

Sec. 233.1. (a) G.S. 20-16.5(j) reads as rewritten:

"(j) Costs. -- Unless the magistrate or judge orders the revocation rescinded, a person whose license is revoked under this section must pay a fee of ~~twenty-five dollars (\$25.00)~~ fifty dollars (\$50.00) as costs for the action before ~~his~~ the person's license may be returned under subsection (h). The costs collected under this section go to the State, shall be credited to the General Fund. Fifty percent (50%) of the costs collected shall be used to fund a statewide chemical alcohol testing program administered by the Injury Control Section of the Department of Environment, Health, and Natural Resources."

(b) G.S. 20-139.1(b1) reads as rewritten:

"(b1) When Arresting or Charging Officer May Not Perform Chemical Analysis. -- A Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:

- (1) The officer possesses a current permit issued by the Department of Environment, Health, and Natural Resources for the type of chemical analysis.
- (2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis."

(c) G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis: Notification of Rights. -- Any person who drives a vehicle on a

highway or public vehicular area thereby gives consent to a chemical analysis if ~~he is~~ charged with an implied-consent offense. The charging officer must designate the type of chemical analysis to be administered, and it may be administered when ~~he~~ the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged must be taken before a chemical analyst authorized to administer a test of a person's breath, who must inform the person orally and also give him the person a notice in writing that:

- (1) He has a right to refuse to be tested.
- (2) Refusal to take any required test or tests will result in an immediate revocation of his driving privilege for at least 10 days and an additional 12-month revocation by the Division of Motor Vehicles.
- (3) The test results, or the fact of his refusal, will be admissible in evidence at trial on the offense charged.
- (4) His driving privilege will be revoked immediately for at least 10 days if:
 - a. The test reveals an alcohol concentration of 0.10 or more; or
 - b. He was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.
- (5) He may have a qualified person of his own choosing administer a chemical test or tests in addition to any test administered at the direction of the charging officer.
- (6) He has the right to call an attorney and select a witness to view for him the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time he is notified of his rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath and the charging officer designates a chemical analysis of the blood of the person charged, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection."

(d) Amounts collected under G.S. 20-16.5(j) for fiscal years 1991-92 and 1992-93 and designated for the alcohol testing program of the Injury Control Section of the Department of Environment, Health, and Natural Resources shall not revert to the General Fund. The amount of funds collected under G.S. 20-16.5(j) that are designated for this alcohol testing program and have not been spent or obligated as of June 30, 1994, shall revert to the Highway Fund.

Beginning with the 1994-95 fiscal year, any funds collected under G.S. 20-16.5(j) that are designated for the alcohol testing program of the Injury Control Section of the Department of Environment, Health, and Natural Resources and are not needed for that program shall be transferred quarterly to the Governor's Highway Safety Program for grants to local law enforcement agencies for training concerning enforcement of the laws on driving while impaired. Except for amounts transferred during the fourth quarter of a fiscal year, the Governor's Highway Safety Program shall expend funds transferred to it under this section in the fiscal year in which they are received. Amounts received by the Governor's Highway Safety Program during the fourth quarter of a fiscal year shall not revert and shall be expended by the following September 30.

(e) There is appropriated from the General Fund to the Department of Environment, Health, and Natural Resources the sum of \$1,433,822 for the 1991-92 fiscal year and the sum of \$1,433,264 for the 1992-93 fiscal year to fund the statewide chemical alcohol testing program administered by the Injury Control Section of the Department; provided, however, if the revenues raised under this section are less than \$1,433,822 for the 1991-92 fiscal year and \$1,433,264 for the 1992-93 fiscal year, the appropriation is reduced accordingly.

(f) Subsection (a) of this section becomes effective August 1, 1991, and applies to revocation orders issued under G.S. 20-16.5 on or after that date. Subsection (b) of this section becomes effective January 1, 1993, and applies to chemical analyses performed on or after that date.

Requested by: Representatives H. Hunter, Ethridge, DeVane,
Senators Martin of Pitt, Tally

-----LAKE RIM FISH HATCHERY REPAIRS

Sec. 233.2. The Wildlife Resources Commission may use no more than \$390,297 for the 1991-92 fiscal year to repair the dam at the Lake Rim Fish Hatchery in Cumberland County.

Requested by: Representatives H. Hunter, Ethridge, DeVane,
Senators Martin of Pitt, Basnight

-----COASTAL BOATING GUIDE

Sec. 233.3. The Wildlife Resources Commission shall use funds available to it for the 1991-92 fiscal year to publish and distribute the North Carolina Coastal Boating Guide.

TITLE III. - CAPITAL IMPROVEMENTS

Sec. 234. The appropriations made by the 1991 General Assembly for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and other capital facilities, for acquiring sites for them where necessary, and for acquiring buildings and land for State government purposes.

PART 43.-----PROCEDURES FOR DISBURSEMENTS

Sec. 235. The appropriations made by the 1991 General Assembly for capital improvements shall be disbursed for the purposes provided by this act. Expenditure of funds shall not be made by any State department, institution, or agency, until an allotment has been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, he shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by the 1991 General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in this act.

PART 44.-----CAPITAL IMPROVEMENTS/GENERAL FUND

Sec. 236. (a) Allocations are made from The State Capital Facilities Legislative Bond Fund of 1991 for the 1991-92 fiscal year to provide for capital improvement projects according to the following schedule:

State Capital Facilities Legislative
Bond Fund of 1991

1991-92

Department of Administration

- | | |
|---|--------------|
| 1. New Central Heat Plant (restores
1990-91 funds) | \$ 6,594,500 |
| 2. Mall Improvements - Sidewalk
Completion and Landscaping | 675,000 |

Department of Human Resources

- | | |
|---|-----------|
| 1. Murdoch Center-Parkview Cottage
Renovation (restores 1990-91 funds) | 1,400,000 |
| 2. John Umstead - Alum Sludge Treatment
Facility | 1,100,000 |
| 3. Black Mountain Center - Renovations
(restores previously appropriated
funds) | 1,300,000 |
| 4. Secretary's Office - Headstart
Bonds Account (Grant equivalent
to one modular classroom or
renovations to existing facilities.) | 1,600,000 |

Department of Crime Control and Public Safety

- | | |
|---|-----------|
| 1. Replace Underground Storage Tanks
to comply with EPA requirements
(National Guard) | 92,000 |
| 2. Goldsboro Armory - Total Requirements | 2,800,800 |
| Federal Funds | 2,057,300 |
| Local Funds | 371,750 |
| State Appropriation | 371,750 |
| 3. Clinton Armory - Total Requirements | 2,608,500 |
| Federal Funds | 1,884,200 |
| Local Funds | 362,150 |
| State Appropriation | 362,150 |

Department of Environment, Health, and Natural Resources

- | | |
|--|-----------|
| 1. Water Resources Development
Projects | 2,055,000 |
| 2. Park Repair and Maintenance
Projects | 2,000,000 |

Office of State Budget

- | | |
|--|-----------|
| 1. Reserve for Repairs and Renovations | 8,299,600 |
|--|-----------|

University of North Carolina

Board of Governors

1. Reserve for Repairs/Renovations	14,300,000
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General Assembly

1. Buildings/Office Repairs and Renovations	4,600,000
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Department of Cultural Resources

1. Fort Fisher/Highway 421 Erosion Control Matching Funds	250,000
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GRAND TOTAL	\$ 45,000,000.
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(b) This section is effective only if Senate Bill 930, 1991 Session, is ratified.

(c) Allocations made in Section 221 of this Title to the Department of Crime Control and Public Safety for the Armory at Goldsboro and the Armory at Clinton are contingent upon federal matching funds being available. If federal matching funds do not become available by July 1, 1992, these allocations shall be transferred to the Office of State Budget and placed in the Reserve for Repairs and Renovations.

PART 44A.-----CAPITAL IMPROVEMENTS/HIGHWAY FUND

Sec. 236.1. Appropriations are made from the Highway Fund for the 1991-92 fiscal year and the 1992-93 fiscal year for use of the Department of Transportation to provide for capital improvement projects according to the following schedule:

DIVISION OF HIGHWAYS

	<u>1991-92</u>	<u>1992-93</u>
01. Bridge Maintenance Office Complex Supplemental - Town of Brunswick	\$224,000	\$ -
02. Equipment Shop - Carthage	-	2,247,000
03. Bridge Maintenance Complex - Wadesboro	26,000	439,000
04. Gas Pump Canopies - Statewide	398,000	311,000

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05. Fencing - Statewide	171.000	-
06. Land Acquisition - Siler City	54.000	-
07. Land Acquisition/Maintenance Yard - Halifax	13.000	-
08. Land Acquisition/Maintenance Yard - Trenton	27.000	-
09. Water and Sewer Connections		
- Statewide	308.000	-
-Greene County Facility	400.000	-
10. Division Office Complex Phase II - Fayetteville	-	1,688.000
11. Division Office Addition		
- Greensboro		
Requirements	589.000	
Less Receipts (Sale of Land)	<u>-589.000</u>	
Appropriation	-	-
12. Landscape Office, Warehouse and Truck Shed - Asheville		
Requirements	472.000	
Less Receipts (Sale of Land)	<u>-472.000</u>	
Appropriation	-	-
13. Salt Storage Buildings		
- Statewide	405.000	67.000
14. Equipment Shop - Mocksville	511.000	-
15. District Office Building		
- Albemarle	49.000	247.000
16. Division of Highways/Division of Motor Vehicles Office Complex - Graham	67.000	-
17. Sign Shop - Town of Union	-	725.000
18. Design Equipment Shop - Meadows	-	41.000

19. Design Equipment Shop - Spindale	-	24,000
20. Design Equipment Shop - Washington	-	40,000
21. Design Equipment Shop - Wentworth	-	44,000
22. Bridge Maintenance Warehouse/Shed - Town of Union	-	81,000
23. Design Sign Shop - Carthage	-	33,000
24. Design Resident Engineer Office - Marion	-	18,000
25. Design Equipment Shop - Kinston	-	43,000
TOTAL DIVISION OF HIGHWAYS	\$2,653,000	\$6,048,000

DIVISION OF MOTOR VEHICLES

	<u>1991-92</u>	<u>1992-93</u>
01. Upgrade Electrical Power, Communication and Computer Circuits - Raleigh Division of Motor Vehicles Building	\$ 216,200	\$ -
02. Building Addition - Wilmington	221,900	-
03. Building Addition - Statesville	170,075	-
04. New Office Building - Asheville	635,100	-
05. Roof Replacement (7 Locations)	100,500	-
06. Resurface Parking Lots (6 Locations)	107,500	-
07. Roof Replacement (7 Locations)	-	103,100
08. Resurface Parking Lots (6 Locations)	-	111,900
09. Building Addition - Goldsboro	-	167,630
10. Building Addition - Whiteville	-	164,770

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11. Building Addition - Hillsborough	-	179.200
12. Building Addition - Kinston	-	179.200
13. Building Addition - Jacksonville	-	174.800
14. Reserve to Make Restrooms Handicapped Accessible in DMV Facilities	<u>25,000</u>	<u>25,000</u>
TOTAL DIVISION OF MOTOR VEHICLES	\$1,476,275	\$1,105.600
CRIME CONTROL AND PUBLIC SAFETY		
01. State Highway Patrol - Troop H Headquarters - New Building	\$190,000	\$1,348.900
02. State Highway Patrol - Upgrade and replace underground fuel tanks	<u>300,000</u>	<u>300,000</u>
TOTAL CRIME CONTROL AND PUBLIC SAFETY	\$ 490,000	\$1,648.900
GRAND TOTAL HIGHWAY FUND	\$4,619,275	\$8,802.500

PART 45.-----SPECIAL PROVISIONS

Requested by: Representative Diamont
-----UNC CAPITAL PROJECTS/FEEES

Sec. 237. (a) All capital improvement projects proposed by the Board of Governors of The University of North Carolina as self-liquidating projects shall include plans for financing the projects, including estimates of the impact on student fees and other charges.

(b) The Board of Governors of The University of North Carolina shall adopt rules which limit the amount of student fees which may be charged to retire debt at each campus. These limitations may be phased in to accommodate these campuses whose fees already exceed the proposed limits.

(c) The Board of Governors of The University of North Carolina shall review annually the amounts and purposes for all student fees

charged by each campus, in an effort to keep these nonacademic fees as low as possible.

Requested by: Representative Holt

-----REALLOCATE DMV FUNDS-ASHEVILLE

Sec. 238. Funds remaining from the appropriation to the Department of Transportation, Division of Motor Vehicles, in Section 8 of Chapter 1074 of the 1989 Session Laws, Regular Session 1990, for land purchase and building design-Asheville, are reallocated to the Division for land and building purchase-Asheville, including appraisal and other costs incidental to such purchase.

Requested by: Representatives H. Hunter, Etheridge, DeVane, N.J. Crawford, Foster, J.W. Crawford, Senator Martin of Pitt

-----PARK REPAIR AND MAINTENANCE/REPORT

Sec. 238.1. (a) The funds appropriated to the Department of Environment, Health, and Natural Resources for the 1991-92 fiscal year in this Title shall be used for park repair and maintenance projects.

(b) The Division shall report to the Joint Legislative Commission on Governmental Operations and to the Office of State Budget and Management by September 20, 1991, on its proposed use of the funds available pursuant to this section. The Division shall not expend or obligate any of these funds until it has made this report.

Requested by: Representative Payne

-----WATER RESOURCES DEVELOPMENT PROJECTS

Sec. 238.2. (a) Of the funds appropriated to the Department of Environment, Health, and Natural Resources for the 1991-92 fiscal year, the sum of \$2,055,000 shall be used for water resources development projects. The Department shall fund the following projects, whose estimated costs are as indicated:

- | | |
|--------------------------|------------|
| (1) Wilmington Harbor | |
| Maintenance and Dredging | \$ 475,000 |
| (2) Morehead City Harbor | 50,000 |
| (3) Northeast Cape Fear | |
| River Navigation | 280,000 |
| (4) Stumpy Point Bay | |
| Maintenance Dredging | 220,000 |
| (5) Great Coharie Creek | |
| Clearing & Snagging | |
| (Sampson County) | 26,000 |
| (6) Wilmington Harbor | |
| Comprehensive Study | 270,000 |

(7) Corps of Engineers Feasibility Studies	75.000
(8) Planning Assistance to State Corps of Engineers	9,000
(9) Town Fork Flood Control and Water Supply (Stokes County)	650.000

(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects listed in subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 1991-92 fiscal year, or if the projects listed in subsection (a) are accomplished at a lower cost, the Department may use the resulting fund availability to fund:

- (1) Corps of Engineers project feasibility studies, or
- (2) Corps of Engineers projects whose schedules have advanced and require State matching funds in fiscal year 1991-92, or
- (3) State-local Water Resources Development Projects.

Funds not expended or encumbered for these purposes shall revert to the General Fund at the end of the 1992-93 fiscal year.

(c) Beginning October 1, 1991, the Department shall make quarterly reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Director of the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include:

- (1) All projects listed in subsection (a) of this section;
- (2) The estimated cost of each project;
- (3) The date work on each project began or is expected to begin;
- (4) The date work on each project was completed or is expected to be completed; and
- (5) The actual cost of each project.

The quarterly reports shall also show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

Requested by: Representatives Barnes, Anderson, Redwine, Senators Basnight, Plyler, Marvin

-----PRISON BOND APPROPRIATIONS

Sec. 239. (a) *General Purposes.* The appropriations hereby made by the 1991 General Assembly for capital improvements from the proceeds of the \$200,000,000 State of North Carolina Prison and Youth Services Facilities Bonds authorized by Chapter 935 of the 1989 Session Laws (the "bond act") and approved by the qualified voters of the State who voted thereon on November 6, 1990, as said bonds may

be issued from time to time (the "bonds"), are for the purposes of financing the cost of \$112,500,000 of State prison facilities and youth services facilities, including, without limitation, the cost of constructing capital facilities, renovating or reconstructing existing facilities, acquiring equipment related thereto, purchasing land, paying costs of issuance of bonds and notes and paying contractual services necessary for the partial implementation of the purposes of the bond act, all as defined in and authorized by the bond act and as more particularly described in this section.

The particular projects within the purposes under the bond act to be financed by the \$87,500,000 balance of the \$200,000,000 bond authorization may, as authorized by the bond act, be determined by legislative action of the General Assembly during the 1991 Session or any subsequent session.

(b) *Appropriation Procedures.* The appropriations hereby made by the 1991 General Assembly for the purposes under the bond act shall be disbursed for the particular projects authorized by this section. Expenditure of funds shall not be made by any State department, institution or agency, until an allotment has been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

Where direct capital improvement appropriations include furnishing fixed and movable equipment for any project, funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by this section shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the appropriations provided, except as otherwise provided in this section.

(c) *Descriptions, Custodial Levels, Beds, Projected Allocations.* Appropriations are made from bond proceeds for use by the Departments of Correction and Human Resources to provide for capital improvement projects as herein provided.

The proceeds of bonds and notes shall be expended for paying the cost, as defined in the bond act, of prison and youth services facilities, to the extent and as provided in this section and subject to change as herein provided, for the following projects:

DEPARTMENT OF CORRECTION

<u>Project Description</u>	<u>Custodial Level</u>	<u>Beds</u>
Nash Correctional Institution	Med	128
Marion Correctional Center	Med	906
Cherry Correctional Center	Min	500
Central Prison	Close	144
Pasquotank Youth Institution	Med	440
NCCIW	Close/Med	256
NCCIW - Repairs and Renovations		
Lumberton Correctional Center	Med	312
Fountain Correctional Center	Min	100
Greene Correctional Center	Min	200
Hyde Correctional Center	Med	312
Brown Creek Sewing Plant		
Pender Furniture Refurbishing Facility		
Columbus Sewing Facility		
Caswell Sewing and Tailoring Equipment		
Harnett Dining Hall		
Subtotal	3,298	\$96,980,702
Contingencies		<u>6,399,608</u>
TOTAL		\$103,380,310

DEPARTMENT OF HUMAN RESOURCES-DIVISION OF YOUTH SERVICES

7 Secure/nonsecure group homes	
9 beds added to Pitt Detention Ctr.	
Renovate unused dorms & upgrade to meet American Correctional Association Standards	
Dillon secure unit, counseling space, & fencing at 5 facilities	
Conversion of dorms to individual rooms	
Increase number of transition beds - step down & independent living for Training Schools	
	\$9,119,690

(d) *Increases in Projected Allocations.* Projected allocations set forth above may be increased to reflect the availability of other funds, including, without limitation, contingency funds, income earned on the investment of bond and note proceeds, funds provided by the issuance of bonds under the remaining \$87,500,000 authorization, and the proceeds of any grants.

(e) *Contingency Funds.* The amount allocated for contingencies set forth above shall be placed by the State Treasurer in a special account in the State Prison and Youth Services Facilities Bond Fund to be designated the "State Prison and Youth Services Facilities Contingency Account." The funds in the State Prison and Youth Services Facilities Contingency Account shall be disbursed in accordance with the procedures herein established for disbursements from the State Prison and Youth Services Facilities Bond Fund. The funds in the State Prison and Youth Services Facilities Contingency Account shall be expended for paying the cost of projects, including, without limitation, the costs of issuance of bonds and notes, increased project costs resulting from construction costs exceeding projected costs, inflationary factors and changes in projects and allocations. Any balance in the State Prison and Youth Services Facilities Contingency Account may be used for the particular projects to be financed by the issuance of bonds under the remaining \$87,500,000 authorization.

(f) *Administration.* With respect to facilities authorized for the Department of Correction, the Office of State Budget and Management may contract for and supervise all aspects of administration, technical assistance, design, construction or demolition of prison facilities in order to implement the providing of prison facilities under the provisions of this act without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 143-135.26(1), 143-128, 143-129, 143-131, 143-132, 143-134, 143-135.26, 143-64.10 through 143-64.13, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(b), 133-1.1(g), and 143-408.1; provided, however, of the funds allocated under the provisions of this act for the construction of prison facilities, the Office of State Budget and Management shall have a verifiable ten percent (10%) goal for participation by minority and women-owned businesses. All contracts for the design, construction, or demolition of prison facilities shall include a penalty for failure to complete the work by a specified date.

The proposals for prison facilities authorized in this section shall be invited by advertisement in newspapers having general circulation in the State. The form of advertisement shall be prepared in the form of Section 301 of the State Construction Manual of the Department of Administration, and shall be published in one issue of the newspaper. A minimum of at least seven full days shall lapse between the date of

publication and the date of the opening of bids. Initiation of the advertisement shall be by the Office of State Budget and Management.

The Office of State Budget and Management shall consider alternative delivery systems that could expedite the delivery of prison facilities. Such delivery systems as design-build, using modular or conventional building systems, shall be considered. However, in order for such alternatives to be used, the Department of Correction must approve the proposed design for operational programming and cost of operations and maintenance.

(g) *Changes.* To the extent that funds are not required to be expended for the specific projects described in this section, appropriations authorized herein may be used to construct, reconstruct, or renovate prison industrial and forestry enterprise, facilities, as mentioned in G.S. 148-2, at prison facilities statewide, as replacement projects, and to make necessary prison facility repairs and renovations but no such funds may be used for operating expenditures. Prior to taking any action under subsection (g), the Governor may consult with the Advisory Budget Commission.

(h) *Quarterly Reports.* The Office of State Budget and Management in respect to prison facilities and the Department of Human Resources in respect to youth services facilities shall provide quarterly reports to the Chairman of the Appropriations Committee and the Base Budget Committee in the Senate, the Chairman of the Appropriations Committee in the House, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division as to any changes in projects and allocations made under this section. To the extent that funds remain unexpended, they shall be subject to further reallocation or reappropriation by the General Assembly for purposes permitted by the Bond Act.

Requested by: Representatives Barnes, Anderson, Redwine, Senators Basnight, Plyler, Marvin

-----RESERVE FOR ADMINISTRATION AND OPERATION OF NEW UNITS

Sec. 240. Of the funds appropriated from the General Fund to the Department of Correction for the 1992-93 fiscal year in Title II of this act, a reserve of \$10,246,368 shall be used to administer and operate the new prison units being constructed with the bond proceeds appropriated in this Title. The positions shall not become effective more than 90 days prior to the completion date of the facilities with the exception of Department of Correction administrative staff, Division of Prisons administrative staff, superintendents, assistant superintendents, administrative services managers, plant maintenance supervisors, and secretaries at the Marion Correctional Institution,

Cherry Correctional Center, Pasquotank Youth Institution, Lumberton Correctional Center, Hyde Correctional Center, and Greene Correctional Center.

Requested by: Representatives Barnes, Anderson, Redwine, Senators Basnight, Plyler, Marvin

-----PITT COUNTY DETENTION CENTER ADDITION/RESERVE FUND

Sec. 241. Of the funds appropriated to the Department of Human Resources for the 1992-93 fiscal year in Title 2 of this act, a reserve of \$60,000 shall be used to administer and operate the addition to the Pitt County Detention Center being constructed with the bond proceeds appropriated in this Title.

Requested by: Senator Soles

-----WATER LINES/COLUMBUS COUNTY NEW HIGH SCHOOL

Sec. 241.1. The Director of the Budget shall use up to \$250,000 from interest accumulated in the Clean Water Revolving Loan and Grant Program in the 1991-92 fiscal year for increasing the size of water and sewer lines, and related pumping facilities, planned for extension to the new high school in Columbus County along Highway 701 north of Tabor City.

Requested by: Representative Barnes

-----UNC REMOVAL OF HANDICAPPED BARRIERS

Sec. 242. (a) Of the funds appropriated in this Title to the Board of Governors of The University of North Carolina, \$2,000,000 shall be used for the elimination of man-made barriers that make the programs or activities of the constituent institutions of the University inaccessible to or unusable by handicapped persons.

(b) Prior to allocating funds for barrier removal, the Board of Governors shall adopt a comprehensive plan, to be completed by no later than January 1, 1992, which shall include:

- (1) A survey of facilities at each constituent institution, to determine which facilities must be modified to insure that institutional programs or activities, when viewed in their entirety, are readily accessible to handicapped persons. The institutional surveys shall be conducted in accordance with definitions and standards adopted by the U.S. Department of Education, under the requirements of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and shall incorporate any findings made by the Office for Civil Rights of the U.S. Department of Education pursuant to either complaint investigations or technical assistance surveys

conducted at constituent institutions of the University. In conducting the survey, each institution shall establish and enlist the assistance of an advisory committee, which shall include handicapped members of the institutional community or their representatives.

- (2) A description of the nature and estimated cost of each facility modification identified in the institutional surveys.
- (3) A schedule for addressing adjustments and modifications designed to insure accessibility, based on the following priorities:
 - a. Nonstructural adjustments. If a program or activity of a constituent institution can be made readily accessible to handicapped persons without structural adjustments, as through reassignment of classes or other services to accessible facilities or making aides available to handicapped persons, such modifications shall be made within 60 days of the date of their identification by the institutional surveys, without regard to the schedule for facility modifications.
 - b. Facility modifications which can be accomplished within one year after their starting date.
 - c. Facility modifications which cannot be accomplished within one year but can be accomplished within three years after their starting date.
 - d. Other facility modifications.

(4) A system for insuring that future facilities are accessible.

(c) The Board of Governors may allocate up to \$200,000 of the bond proceeds to conduct the surveys and complete the plan required by this section.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----RESERVE FOR ADVANCE PLANNING

Sec. 243. The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on how it intends to spend funds from the Reserve for Advance Planning at least 45 days before it spends the funds.

The Office of State Budget and Management shall also report the results of any project on which it uses funds from the Reserve for Advance Planning to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----ENCUMBERED APPROPRIATIONS AND PROJECT RESERVE FUND

Sec. 244. When each capital improvement project appropriated by the 1991 General Assembly, other than those projects under the Board of Governors of The University of North Carolina, is placed under construction contract, direct appropriations shall be encumbered to include all costs for construction, design, investigation, administration, movable equipment, and a reasonable contingency. Unencumbered direct appropriations remaining in the project budget shall be placed in a project reserve fund credited to the Office of State Budget and Management. Funds in the project reserve may be used for emergency repair and renovation projects at State facilities with the approval of the Director of the Budget. The project reserve fund may be used, at the discretion of the Director of the Budget, to allow for award of contracts where bids exceed appropriated funds, if those projects supplemented were designed within the scope intended by the applicable appropriation or any authorized change in it, and if, in the opinion of the Director of the Budget, all means to award contracts within the appropriation were reasonably attempted. At the discretion of the Director of the Budget, any balances in the project reserve fund shall revert to the original source.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----PROJECT COST INCREASE

Sec. 245. Upon the request of the administration of a State department or institution, the Director of the Budget may, when in his opinion it is in the best interest of the State to do so, increase the cost of a capital improvement project. Provided, however, that if the Director of the Budget increases the cost of a project, he shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting. The increase may be funded from gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, or direct capital improvement appropriations to that department or institution.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----NEW PROJECT AUTHORIZATION

Sec. 246. Upon the request of the administration of any State department or institution, the Governor may authorize the construction

of a capital improvement project not specifically authorized by the General Assembly if such project is to be funded by gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, or self-liquidating indebtedness. Provided, however, that if the Director of the Budget authorizes the construction of such a capital improvement project, he shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----ADVANCE PLANNING OF CAPITAL IMPROVEMENT PROJECTS

Sec. 247. Funds which become available by gifts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, federal or private grants, receipts becoming a part of special funds by act of the General Assembly or any other funds available to a State department or institution may be utilized for advance planning through the working drawing phase of capital improvement projects, upon approval of the Director of the Budget. The Director of the Budget may make allocations from the Advance Planning Fund for advance planning through the working drawing phase of capital improvement projects, except that this revolving fund may not be utilized by the Board of Governors of The University of North Carolina or the State Board of Community Colleges.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----APPROPRIATIONS LIMITS/REVERSION OR LAPSE

Sec. 248. Except as permitted in previous sections of this act, the appropriations for capital improvements made by the 1991 General Assembly may be expended only for specific projects set out by the 1991 General Assembly and for no other purpose. Construction of all capital improvement projects enumerated by the 1991 General Assembly shall be commenced, or self-liquidating indebtedness with respect to them shall be incurred, within 12 months following the first day of the fiscal year in which the funds are available. If construction contracts on those projects have not been awarded or self-liquidating indebtedness has not been incurred within that period, the direct appropriation for those projects shall revert to the original source, and the self-liquidating appropriation shall lapse; except that direct appropriations may be placed in a reserve fund as authorized in this act. This deadline with respect to both direct and self-liquidating

appropriations may be extended up to an additional 12 months if circumstances and conditions warrant such extension.

TITLE IV. - REVENUE RECONCILIATION

PART 46.-----INTERNAL REVENUE CODE UPDATE

Sec. 249. G.S. 105-2.1 reads as rewritten:

" § 105-2.1. *Internal Revenue Code definition.*

As used in this Article, the term 'Code' means the Internal Revenue Code as enacted as of January 1, 1990, January 1, 1991, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 250. G.S. 105-114(b)(1) reads as rewritten:

"(1) The term 'Code' means the Internal Revenue Code as enacted as of January 1, 1990, January 1, 1991, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 251. G.S. 105-131(b)(1) reads as rewritten:

"(1) 'Code' means the Internal Revenue Code as enacted as of January 1, 1990, January 1, 1991, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 252. G.S. 105-134.1(1) reads as rewritten:

"(1) Code. The Internal Revenue Code as enacted as of January 1, 1990, January 1, 1991, including any provisions enacted as of that date which become effective either before or after that date, ~~date, but not including sections 63(c)(4) and 151(d)(3).~~"

Sec. 253. G.S. 105-134.6(b)(8) reads as rewritten:

"(8) The amount by which the taxpayer's ~~mortgage interest deduction~~ deductions allowed under the Code was reduced pursuant to section 163(g) of the Code, were reduced, and the amount of the taxpayer's deductions that were not allowed, because the taxpayer elected a federal tax credit in lieu of a deduction, to the extent that a similar credit is not allowed by this Division for the amount."

Sec. 254. G.S. 105-134.6(c)(4) reads as rewritten:

"(4) The amount by which the taxpayer's standard deduction has been increased for inflation under section 63(c)(4) of the Code and the amount by which the taxpayer's personal exemptions have been increased for inflation under section ~~151(d)(3)~~ 151(d)(4) of the Code. For the purpose of this subdivision, if the taxpayer's personal exemptions have

been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage."

Sec. 255. G.S. 105-163.1(1) reads as rewritten:

"(1) Code. -- The Internal Revenue Code as enacted as of January 1, 1990, January 1, 1991, including any provisions enacted as of that date which become effective either before or after that date."

Sec. 256. G.S. 105-212(f) reads as rewritten:

"(f) As used in this section, the term 'Code' means the Internal Revenue Code as enacted as of January 1, 1990, January 1, 1991, and includes any provisions enacted as of that date which become effective either before or after that date."

PART 47.-----CORPORATE INCOME TAX CHANGES

Sec. 257. G.S. 105-130.2 reads as rewritten:

" § 105-130.2. *Definitions.*

~~For the purpose of this Division, and unless otherwise required by the context:~~ The following definitions apply in this Division:

- (1) ~~'Code' means the Code.~~ -- The Internal Revenue Code as enacted as of January 1, 1990, and includes 1991, including any provisions enacted as of that date which become effective either before or after that date.
- (1a) ~~The word 'corporation'~~ Corporation. -- This term includes joint-stock companies or associations and insurance companies.
- (1b) C Corporation. -- A corporation that is not an S Corporation.
- (1c) Department. -- The Department of Revenue.
- (2) ~~The words 'domestic corporation' mean any Domestic corporation.~~ -- A corporation organized under the laws of this State.
- (3) ~~The words 'fiscal year' mean an Fiscal year.~~ -- An income year, ending on the last day of any month other than December. A corporation ~~which that~~ pursuant to the provisions of the Code has elected to compute its federal income tax liability to the United States on the basis of an annual period varying from 52 to 53 weeks shall compute its taxable income ~~for the purposes of this division under this Division~~ on the basis of the same period used by such the corporation ~~in accordance with the Code~~ in computing

~~its federal income tax liability to the United States for such for the income year.~~

- (4) ~~The words 'foreign corporation' mean any Foreign corporation. -- Any corporation other than a domestic corporation.~~
- (5) ~~The words 'income year' or 'taxable year' mean the Income year. -- The calendar year or the fiscal year upon the basis of which the net income is computed under this division; provided, that if Division. If no fiscal year has been established, they mean the income year is the calendar year. year, except that in In the case of a return made for a fractional part of a year under the provisions of this Division or under rules or regulations prescribed adopted by the Secretary of Revenue, the words 'income year' or 'taxable year' mean Secretary, the income year is the period for which such the return is made.~~
- (5a) ~~S Corporation. -- Defined in G.S. 105-131(b).~~
- (5b) ~~Secretary. -- The Secretary of Revenue.~~
- (5c) ~~State net income. -- Federal taxable income adjusted as provided in G.S. 105-130.5 and, in the case of a corporation that has income from business activity that is taxable both within and without this State, allocated and apportioned to this State as provided in G.S. 105-130.4.~~
- (5d) ~~Taxable year. -- Income year.~~
- (6) ~~The word 'taxpayer' includes any Taxpayer. -- A corporation subject to the tax imposed by this Division."~~

Sec. 258. G.S. 105-130.3 reads as rewritten:

" § 105-130.3. *Corporations.*

A tax is imposed on the State net income of every C Corporation doing business in this State at seven and seventy-five one-hundredths percent (7.75%) of the corporation's State net income. An S Corporation is not subject to the tax levied in this section.

~~Every corporation doing business in this State shall pay annually an income tax equivalent to seven percent (7%) of its net income or the portion thereof allocated and apportioned to this State, except that an S Corporation subject to the provisions of Division I-S of this Article shall not be subject to the tax levied by this section.~~

~~The net income or net loss of such corporation shall be the same as 'taxable income' as defined in the Code subject to the adjustments provided in G.S. 105-130.5.~~

~~If the entire business of the corporation is done within this State or if the corporation is not taxable in another state within the meaning of subsection (b) of G.S. 105-130.4, the tax shall be measured by the entire net income of the corporation for the income year.~~

~~If the business of the corporation is taxable both within and without this State, its entire net income or net loss shall be allocated and apportioned in accordance with the provisions of G.S. 105-130.4."~~

Sec. 259. Division I of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

" § 105-130.3A. Temporary surtax.

(a) Surtax. -- In addition to the income tax imposed by G.S. 105-130.3, every taxpayer required to file a return under this Division shall pay an income tax surtax equal to a percentage of the tax payable by the taxpayer under G.S. 105-130.3 for the taxable year. This surtax is due at the time prescribed in G.S. 105-130.17 for filing corporation income tax returns.

(b) Rates. -- The percentage rates of the surtax levied in this section are as follows:

- (1) For the taxpayer's taxable year beginning in 1991, four percent (4%).
- (2) For the taxpayer's taxable year beginning in 1992, three percent (3%).
- (3) For the taxpayer's taxable year beginning in 1993, two percent (2%).
- (4) For the taxpayer's taxable year beginning in 1994, one percent (1%)."

Sec. 260. G.S. 115C-546.1 reads as rewritten:

" § 115C-546.1. Creation of Fund; administration.

(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs.

(b) Beginning October 1, 1987, and each month thereafter through July 31, 1988, the Secretary of Revenue shall deposit with the State Treasurer in the Public School Building Capital Fund one-seventh (1/7) of the corporate income tax net collections received during the previous month by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes. Beginning July 1, 1988, the Each calendar quarter, the Secretary of Revenue shall, on a quarterly basis, deposit with shall remit to the State Treasurer in for credit to the Public School Building Capital Fund an amount equal to two thirty-firsts (2/31) of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3 minus two million five hundred thousand dollars (\$2,500,000). (\$2,500,000) less than one-fourteenth (1/14) of the corporate income tax net

collections received during the previous quarter by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes. All funds deposited in the Public School Building Capital

Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(c) The Fund shall be administered by the Office of State Budget and Management."

Sec. 261. Notwithstanding G.S. 105-163.41, no addition to tax may be made under that statute for a taxable year beginning on or after January 1, 1991, and before January 1, 1992, with respect to an underpayment of corporation income tax to the extent the underpayment was created or increased by this act.

PART 48.-----CIGARETTE TAX CHANGES

Sec. 262. G.S. 105-113.5 reads as rewritten:

" § 105-113.5. ~~Privilege tax levied.~~ Tax on cigarettes.

~~In addition to all other taxes and fees, a tax is hereby levied upon the sale or possession for sale within this State, by distributors, of all cigarettes at the rate of one mill per individual cigarette. A tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of two and one-half mills per individual cigarette.~~

~~The tax hereby levied shall not apply to~~ This tax does not apply to any of the following:

- (1) ~~Sample free distribution of sample cigarettes distributed without charge in packages containing five or fewer cigarettes nor to any cigarettes.~~
- (2) ~~Cigarettes in a package of cigarettes customarily donated free of given without charge by manufacturers of cigarettes to employees in factories where cigarettes are manufactured in this State where such packages of cigarettes the manufacturer of the cigarettes to an employee of the manufacturer who works in a factory where cigarettes are made, if the cigarettes are not taxed by the federal government."~~

Sec. 263. G.S. 105-113.7 reads as rewritten:

" § 105-113.7. ~~Tax with respect to inventory on effective date of Article, tax increase.~~

~~Every person distributor subject to the taxes levied in G.S. 105-113.5 and G.S. 105-113.6 this Article who, on the effective date of a tax increase under this Article, has on hand any cigarettes shall file a complete inventory thereof of the cigarettes within 20 days thereafter, after the effective date of the increase, and shall pay an additional tax to the Secretary at the time of when filing such inventory a tax with respect thereto computed at the rate set forth in G.S. 105-113.5 and G.S. 105-113.6. All provisions of this Article relative to the collection, verification and administration of the tax~~

~~herein imposed shall, insofar as pertinent, be applicable to the tax imposed by this section, but the affixing of stamps as evidence of the payment of such tax by persons subject to the taxes levied in G.S. 105-113.6 shall not be necessary except as the Secretary by regulation or administrative rule may require, the inventory. The amount of tax due is the amount due based on the difference between the former tax rate and the increased tax rate."~~

PART 49.-----OTHER TOBACCO TAX CHANGES

Sec. 264. The heading to Article 2A of Chapter 105 of the General Statutes reads as rewritten:

"Schedule B-A. Cigarette Tobacco Products Tax."

Sec. 265. Article 2A of Chapter 105 of the General Statutes is amended as follows:

- (1) By designating G.S. 105-113.2 through G.S. 105-113.4 as Part 1 with the heading "General Provisions."
- (2) By designating G.S. 105-113.5 through G.S. 105-113.34 as Part 2 with the heading "Cigarette Tax."
- (3) By designating G.S. 105-113.35 through G.S. 105-113.40 as Part 3 with the heading "Tax on Other Tobacco Products."

Sec. 266. G.S. 105-113.2 reads as rewritten:

"§ 105-113.2. *Short title.*

This Article may be cited as the 'Cigarette Tobacco Products Tax Act' or 'Cigarette Tobacco Products Tax Article.'"

Sec. 267. G.S. 105-113.4 reads as rewritten:

"§ 105-113.4. *Definitions.*

~~The following words, terms, and phrases when used in this Article have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning; definitions apply in this Article:~~

- (1) Cigar. -- A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.

- (4) (1a) ~~'Cigarette' means --~~ Cigarette. -- Any of the following:

- a. ~~Any~~ A roll of tobacco wrapped in paper or in ~~any~~ a substance that does not containing tobacco, and contain tobacco.
- b. ~~Any~~ A roll of tobacco wrapped in ~~any~~ a substance containing that contains tobacco which, and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered ~~to,~~ to or purchased ~~by consumers by a~~

- consumer as a cigarette described in subparagraph (1) a above, subpart a. of this subdivision.
- (2) 'Secretary' means Secretary of Revenue of the State of North Carolina. Cost price. -- The price a person liable for the tax on tobacco products imposed by Part 3 of this Article paid for the products, before any discount, rebate, or allowance or the tax imposed by that Part.
 - (3) 'Distributor' means any Distributor. -- Any person, wherever resident or located, who purchases unstamped cigarettes directly from the manufacturer thereof and stores, sells or otherwise disposes of the same; and also any person who manufactures or produces cigarettes or causes them to be manufactured or produced.
 - (4) 'In this State' or 'within this State' means within the exterior limits of the State of North Carolina, and includes all territory within such limits owned by, leased by or ceded to the United States of America.
 - (5) 'Licensed distributor' means any distributor, as defined in this Article, Licensed distributor. -- A distributor licensed under the provisions Part 2 of this Article.
 - (6) 'Manufacturer' means any Manufacturer. -- A person engaged in the manufacture or production of cigarettes, who manufactures or produces tobacco products.
 - (7) 'Package' means the Package. -- The individual packet, can, box box, or other container used to contain and to convey cigarettes tobacco products to the consumer.
 - (8) 'Person' means and includes any Person. -- An individual, a firm, copartnership, joint venture, a partnership, an association, a corporation, estate, trust, business trust, receiver, syndicate, or any other organization or group or combination acting as a unit, the State or any of its political subdivisions, and the plural as well as the singular number, unit.
 - (9) 'Retail dealer' means any Retail dealer. -- A person other than a distributor engaged in this State in the business of selling cigarettes at retail, who sells a tobacco product to the ultimate consumer of the product.
 - (10) 'Selling' or 'sale' means any sale, transfer, exchange, barter, gift, or offer for sale and distribution, in any manner or by any means whatsoever. Sale. -- A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.
 - (10a) Secretary. -- The Secretary of Revenue.

- (11) ~~'Stamp' means any Stamp.~~ -- Any impression, device, stamp, label label, or print manufactured, ~~printed printed~~, or made as prescribed by the Secretary under Part 2 of this Article.
- (11a) Tobacco product. -- A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use.
- (12) ~~'Unstamped' means not Unstamped.~~ Not bearing a North Carolina cigarette tax ~~stamp prescribed by the Secretary under this Article.~~ stamp.
- (13) ~~'Use' means the Use.~~ -- The exercise of any right or power over cigarettes, incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling ~~cigarettes and shall include cigarettes.~~ The term includes the keeping or retention of cigarettes for use.
- (14) Wholesale dealer. -- A person who makes tobacco products other than cigarettes or who acquires tobacco products other than cigarettes for sale to another wholesale dealer or to a retail dealer."

Sec. 268. G.S. 105-113.3 reads as rewritten:

" § 105-113.3. ~~Purpose.~~ *Scope of tax; administration.*

~~It is hereby declared to be the intent and purpose of this Article that the incidence of the tax herein provided for shall rest upon the ultimate consumer and not upon the grower or processor of leaf tobacco or upon the manufacturer of cigarettes. This tax shall be paid to the State only once, regardless of the number of times the cigarettes may be sold in this State, but it is the intent of this Article that such tax shall be added to the sales price and passed on from successive sellers to successive purchasers so that it may be included in the ultimate purchase price of the final or last purchaser. The amount of the tax may be stated separately from the price of cigarettes on all price display signs, sales or delivery slips, bills and statements which advertise or indicate the price, but it is not required that it be stated in such manner or in any other manner. The provisions of this section shall in no way affect the assessment, levy or collection of the taxes provided for by this Article, as the same may be more specifically provided herein with respect to activities hereinafter described, but merely states the general intent with respect to this Article. (a) Scope.~~

-- The taxes imposed by this Article shall be collected only once on the same tobacco product. Except as permitted by Article 2 of this Chapter, a city or county may not levy a privilege license tax on the sale of tobacco products.

(b) Administration. -- Except as provided in this section, Article 9 of this Chapter applies to this Article. If a person fails or refuses to pay a tax due under this Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due."

Sec. 269. G.S. 105-113.35 reads as rewritten:

"§ 105-113.35. ~~Interest and penalty.~~ *Tax on tobacco products other than cigarettes.*

~~If any person shall neglect, fail or refuse to pay any tax due under this Article, interest shall be added thereto at the rate established pursuant to G.S. 105-241.1(i) from the date due until paid and there shall also be added to said tax an amount equal to fifty percent (50%) thereof.~~ (a) Tax. -- An excise tax is levied on tobacco products other than cigarettes at the rate of two percent (2%) of the cost price of the products. This tax does not apply to the following:

- (1) A tobacco product sold outside the State.
- (2) A tobacco product sold to the federal government.
- (3) A sample tobacco product distributed without charge.

(b) Primary Liability. -- The wholesale dealer or retail dealer who first acquires or otherwise handles tobacco products subject to the tax imposed by this section is liable for the tax imposed by this section. A wholesale dealer or retail dealer who brings into this State a tobacco product made outside the State is the first person to handle the tobacco product in this State. A wholesale dealer or retail dealer who is the original consignee of a tobacco product that is made outside the State and is shipped into the State is the first person to handle the tobacco product in this State.

(c) Secondary Liability. -- A retail dealer who acquires non-tax-paid tobacco products subject to the tax imposed by this section from a wholesale dealer is liable for any tax due on the tobacco products. A retail dealer who is liable for tax under this subsection may not deduct a discount from the amount of tax due when reporting the tax."

Sec. 270. G.S. 105-113.36 reads as rewritten:

"§ 105-113.36. ~~General administrative provisions of Revenue Act applicable.~~ *Wholesale dealer and retail dealer must obtain license.*

All provisions not inconsistent with this Article contained in Article 9 entitled "General Administration; Penalties and Remedies" of Subchapter I of Chapter 105 of the General Statutes, including but not limited to administration, auditing, making returns, promulgation of administrative rules and regulations by the Secretary, additional taxes, assessment procedure, imposition and collection of taxes of the lien thereof, assessments, refunds and penalties are hereby made a part of this Article and shall be applicable thereto.

A wholesale dealer shall obtain for each place of business a continuing tobacco products license and shall pay a tax of twenty-five

dollars (\$25.00) for the license. A retail dealer shall obtain for each place of business a continuing tobacco products license and shall pay a fee of ten dollars (\$10.00) for the license. A 'place of business' is a place where a wholesale dealer or where a retail dealer makes tobacco products other than cigarettes or a wholesale dealer or a retail dealer receives or stores non-tax-paid tobacco products other than cigarettes."

Sec. 271. G.S. 105-113.37 reads as rewritten:

"§ 105-113.37. ~~Secretary to make rules and regulations.~~ *Payment of tax.*

~~Subject to the provisions of G.S. 105-262, the Secretary is hereby authorized and empowered to make all reasonable regulations and administrative rules necessary for the efficient administration and enforcement of this Article not inconsistent with the provisions of this Article. Upon request, he shall furnish any taxpayer with a copy of such rules and regulations. All provisions with respect to reviews and appeals from the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3 and 105-241.4 of the General Statutes shall be applicable to this Article.~~

(a) Monthly Report. -- Except for tax on a designated sale under subsection (b), the taxes levied by this Article are payable when a report is required to be filed. A report is due on a monthly basis. A monthly report covers sales and other activities occurring in a calendar month and is due within 20 days after the end of the month covered by the report. A report shall be filed on a form provided by the Secretary and shall contain the information required by the Secretary.

(b) Designation of Exempt Sale. -- A wholesale dealer who sells a tobacco product to a person who has notified the wholesale dealer in writing that the person intends to resell the item in a transaction that is exempt from tax under G.S. 105-113.35(a)(1) or (2) may, when filing a monthly report under subsection (a), designate the quantity of tobacco products sold to the person for resale. A wholesale dealer shall report a designated sale on a form provided by the Secretary.

A wholesale dealer is not required to pay tax on a designated sale when filing a monthly report. The wholesale dealer shall pay the tax due on all other sales in accordance with this section. A wholesale dealer or a customer of a wholesale dealer may not delay payment of the tax due on a tobacco product by failing to pay tax on a sale that is not a designated sale or by overstating the quantity of tobacco products that will be resold in a transaction exempt under G.S. 105-113.35(a)(1) or (2).

A person who does not sell a tobacco product in a transaction exempt under G.S. 105-113.35(a)(1) or (2) after a wholesale dealer has failed to pay the tax due on the sale of the item to the person in reliance on the person's written notification of intent is liable for the tax and any penalties and interest due on the designated sale. If the

Secretary determines that a tobacco product reported as a designated sale is not sold as reported, the Secretary shall assess the person who notified the wholesale dealer of an intention to resell the item in an exempt transaction for the tax due on the sale and any applicable penalties and interest. A wholesale dealer who does not pay tax on a tobacco product in reliance on a person's written notification of intent to resell the item in an exempt transaction is not liable for any tax assessed on the item.

(c) Refund. -- A wholesale dealer or retail dealer who pays tax on a tobacco product that is exempt from the tax may obtain a refund for the amount of tax paid by filing an application for refund with the Secretary on a form provided by the Secretary. An application for a refund must be submitted within the time allowed by G.S. 105-266 or G.S. 105-266.1."

Sec. 272. G.S. 105-113.38 reads as rewritten:

" § 105-113.38. ~~Tax to be paid only once.~~ Bond.

~~Whenever the tax levied by this Article has been computed and paid to the State with respect to any cigarettes as provided by this Article, and appropriate stamps affixed, the same shall not be required to be paid again to the State regardless of how many times such cigarettes may thereafter be sold or resold, but the seller may add to his sales price thereafter the amount of such tax. The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in an amount that adequately protects the State from loss if the dealer fails to pay taxes due under this Part. A bond shall be conditioned on compliance with this Part, shall be payable to the State, and shall be in the form required by the Secretary. The Secretary shall proportion a bond amount to the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary shall periodically review the sufficiency of bonds required of dealers, and shall increase the amount of a required bond when the amount of the bond furnished no longer covers the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary shall decrease the amount of a required bond when the Secretary determines that a smaller bond amount will adequately protect the State from loss."~~

Sec. 273. G.S. 105-113.39 reads as rewritten:

" § 105-113.39. ~~Local units prohibited to tax.~~ Discount.

~~No city, town or county shall levy any privilege license tax with respect to the sale of cigarettes other than as permitted by Article 2 of Subchapter I of Chapter 105 of the General Statutes.~~

A wholesale dealer or a retail dealer who is primarily liable under G.S. 105-113.35(b) for the excise taxes imposed by this Part and who files a timely report under G.S. 105-113.37 may deduct from the amount due with the report a discount of four percent (4%). This

discount covers losses due to damage to tobacco products, expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond."

Sec. 274. G.S. 105-113.40 reads as rewritten:

" § 105-113.40. ~~Effective date of this Article. Records of sales, inventories, and purchases to be kept.~~

This Article shall be in full force and effect on and after July 1, 1969, or on the first day of the month next after the ninetieth day from its ratification, whichever is the later date. However, the Secretary is authorized, prior to that time, to do all things necessary to the implementation of the provisions of this Article, including making regulations and administrative rules, procuring the manufacture of stamps, and providing for sale of the same, in order to secure effective administration of this Article on and after its effective date. Every wholesale dealer and retail dealer shall keep accurate records of the dealer's purchases, inventories, and sales of tobacco products. These records shall be open at all times for inspection by the Secretary or an authorized representative of the Secretary."

PART 50.-----SOFT DRINK TAX ADMINISTRATIVE CHANGES

Sec. 275. G.S. 105-113.44 reads as rewritten:

" § 105-113.44. Definitions.

As used in this Article, unless the context otherwise requires; The following definitions apply in this Article:

- (1) 'Base products' means hot chocolate flavored drink mix, flavored milk shake bases, concentrate products to which milk or other liquid is added to complete a soft drink, and all like items or products as herein defined which will be taxed as syrups. Base product. The compound mixture or basic ingredients to which liquid milk or another liquid is added to complete a soft drink. The term includes a powder, a simple syrup, a chocolate syrup, other syrups, and a concentrate.
- (2) 'Bottled' means enclosed in any closed or sealed glass, metal, paper or other type of bottle, can, carton or container, regardless of the size of such container. Bottled. In a closed container of any kind.
- (3) 'Soft drink' means any complete, finished, ready-to-use, nonalcoholic drink, whether carbonated or not, such as soda water, ginger ale, Nu-Grape, Coca-Cola, lime-cola, Pepsi-Cola, bud-wine, near beer, fruit juice, vegetable juice, milk drinks when any flavoring or syrup is added,

- ~~cider, carbonated water and all preparations commonly referred to as soft drinks of whatever kind or description.~~
- (4) ~~'Secretary' means the North Carolina Secretary of Revenue.~~
- (5) ~~'Crowns' means crowns, caps and lids bearing any tax indicia other than stamps evidencing the payment of the excise tax levied under this Article. 'Crowns' shall also include waxed paper or plastic containers used by dairies upon which the tax indicia has been imprinted by the manufacturer thereof.~~
- (6) ~~'Distributor' includes any person who manufactures, bottles, compounds, mixes or purchases for sale to retail dealers or wholesale dealers any bottled soft drink, soft drink syrup or powder, or base product for mixing, making or compounding soft drinks. Distributor. A person who makes bottled soft drinks or base products or who acquires bottled soft drinks or base products for sale to a wholesale dealer or a retail dealer.~~
- (7) ~~'Excise tax' means the soft drink tax levied under G.S. 105-113.45, Juice. Any of the following:~~
- ~~a. The liquid that results from pressing fresh fruit or fresh vegetables.~~
- ~~b. The concentrate produced by dehydrating a liquid described in subpart a.~~
- ~~c. The liquid that results from adding water to a concentrate described in subpart b.~~
- (8) ~~'In this State' or 'within this State' means within the exterior limits of the State of North Carolina and includes all territory within such limits owned by, leased by or ceded to the United States of America, Milk. Any of the following:~~
- ~~a. Liquid milk, regardless of butterfat content.~~
- ~~b. The powder produced by dehydrating liquid milk.~~
- ~~c. The liquid that results from adding water to dehydrated liquid milk.~~
- (9) ~~'Natural fruit juice' means the natural liquid which results from the pressing of sound ripe fruit, and the liquid which results from the reconstitution of natural fruit juice concentrate by the restoration of water to dehydrated natural fruit juice, Natural. Without added ingredients of any kind other than vitamins. Added ingredients include sugar, salt, preservatives, artificial flavoring, coloring, and carbonation.~~

- (10) ~~'Natural liquid milk' means natural liquid milk regardless of butterfat content, and the liquid milk product which results from the reconstitution of natural milk concentrate, regardless of butterfat content, by the restoration of water to dehydrated or evaporated natural milk.~~
- (11) ~~'Natural vegetable juice' means the natural liquid which results from the pressing of sound ripe vegetables or the liquid which results from the reconstitution of natural vegetable juice concentrate by the restoration of water to dehydrated natural vegetable juice.~~
- (12) ~~'Person' includes any Person. An individual, a firm, a partnership, joint venture, an association, a corporation, estate, trust, receiver, syndicate or any other organization or group or combination acting as a unit, the State or any of its political subdivisions, and the plural as well as the singular number, unit.~~
- (13) ~~'Powders' means compressed powders, crystals, granules or tablets from which soft drinks can be made. Powder, Crystals, granules, tablets, and other dry products.~~
- (14) ~~'Retail dealer' includes every person, other than a distributor or wholesale dealer, who makes, mixes, compounds or manufactures any drink from a soft drink syrup or powder or base product, and sells or otherwise dispenses the same to the ultimate consumer, and every person, other than a distributor or wholesale dealer, who sells or otherwise dispenses any bottled soft drink to the ultimate consumer. Retail dealer. A person who sells bottled soft drinks or base products to the ultimate consumer or who makes soft drinks from base products and sells the soft drinks to the ultimate consumer.~~
- (15) ~~'Selling' or 'sale' means any sale, transfer, exchange, barter, gift or offer for sale and distribution, in any manner or by any means whatsoever. Sale. A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.~~
- (16) ~~'Simple syrup' means the product resulting from the making, mixing, compounding or manufacturing by dissolving sugar and water or any other mixture that will create syrup to which may be added concentrates or extracts. Secretary. The Secretary of Revenue.~~
- (17) ~~'Soda fountain' includes all places where soft drinks are compounded for sale, including automatic vending machines. Soft drink. A beverage that is not an alcoholic beverage, as defined in G.S. 105-113.68.~~

- (18) ~~'Soft drink syrups and powders' includes the compound mixture or the basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing or compounding soft drinks by the mixing thereof with carbonated or plain water, ice, fruit juice, milk or any other product suitable to make soft drinks, among such syrups being such products as Coca-Cola syrup, Chero-Cola syrup, Pepsi-Cola syrup, Dr. Pepper syrup, root beer syrup, Nu-Grape syrup, lemon syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder, malt drink powder, or any other prepared syrups or powders sold or used for the purpose of mixing soft drinks commercially at soda fountains, restaurants or similar places as well as those powder bases prepared for the purpose of domestically mixing soft drinks such as kool-aid, oh boy drink, tip-top, miracle aid and all other similar products, Concentrated natural frozen or unfrozen fruit juices or vegetable juices when used domestically are specifically excluded from this definition.~~
- (19) ~~'Stamp' means the North Carolina taxpaid stamp evidencing the payment of the excise tax levied by this Article, and which may be used as permitted by the Secretary in lieu of taxpaid crowns.~~
- (20) ~~'Wholesale dealer' includes any person who sells bottled soft drinks, soft drink syrups or powders, or base products for mixing, compounding or making soft drinks to retail dealers or other wholesale dealers for resale purposes. Wholesale dealer. A person who sells bottled soft drinks or base products to another for resale."~~

Sec. 276. G.S. 105-113.45 reads as rewritten:

" § 105-113.45. ~~Taxation rate.~~ Excise taxes on soft drinks and base products.

(a) Bottled Soft Drinks. -- A soft drink excise tax is hereby levied and imposed on and after midnight, September 30, 1969, upon the sale, use, handling and distribution of all soft drinks, soft drink syrups and powders, base products and other items referred to in this section. An excise tax of one cent (1¢) is levied on each bottled soft drink.

(b) The rate of tax on each bottled soft drink shall be one cent (1¢).

(c) Liquid Base Products. -- The rate of tax on each gallon of soft drink syrup or simple syrup shall be one dollar (\$1.00), and on a fraction of a gallon the rate shall be an amount which represents one dollar (\$1.00) multiplied by the same fraction of a gallon. The rate of a tax on each ounce or fraction of an ounce of soft drink syrup or

~~simple syrup shall be four fifths of a cent (4/5¢), and no exemption or refund shall be allowed on such syrup even though it may subsequently be diverted to some purpose other than the making of soft drinks. An excise tax of one dollar (\$1.00) a gallon, or four-fifths of a cent (4/5¢) an ounce or fraction of an ounce, is levied on a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink.~~

~~(d) Dry Base Products. -- The rate of tax on dry soft drink powders and base products which are used to make soft drinks without being converted into syrup shall be one cent (1¢) per ounce or fraction thereof of the dry powder or base product weight. However, the tax on dry soft drink powder or base product which is to be converted into syrup shall be the same as that which would be due upon the syrup produced, if the syrup were being taxed according to the rates set out in subsection (c) above. An excise tax is levied on a dry base product at the rate:~~

- ~~(1) Of one cent (1¢) an ounce or fraction of an ounce if the dry base product is not converted into a syrup or other liquid base product before it is used to make a soft drink.~~
- ~~(2) That would apply under subsection (c) to the resulting liquid base product if the dry base product is converted into a liquid base product before it is used to make a soft drink.~~

~~(e) The excise tax herein levied on syrups, powders and base products shall not apply to syrups, powders and base products used by persons in the manufacture of bottled soft drinks which are otherwise subject to tax under this Article. The Secretary may by administrative rules or regulation, provide for the storage of such syrups, powders and base products when they are not for use in the manufacture of bottled soft drinks."~~

Sec. 277. G.S. 105-113.46 reads as rewritten:

"§ 105-113.46. *Exemption of certain milk drinks. Exemptions.*

The taxes imposed by this Article do not apply to an item that is listed in this section and, if the item is a bottled soft drink or a juice concentrate included in subdivision (2) or (3), is registered with the Secretary in accordance with G.S. 105-113.47:

- (1) A natural liquid milk drink produced by a farmer or a dairy.
- (2) A bottled soft drink that contains at least thirty-five percent (35%) natural milk measured by volume and is not exempt under subdivision (1).
- (3) Natural juice.
- (4) Natural water.
- (5) A base product used to make a bottled soft drink subject to tax under this Article.

- (6) Coffee or tea in any form.
- (7) A bottled soft drink or base product sold outside the State.
- (8) A bottled soft drink or base product sold to the federal government.
- (9) A base product for domestic use, except a base product that does not contain any milk and to which a liquid other than milk is added to make a soft drink.

~~All natural liquid milk drinks produced by farmers or dairies shall be exempt from the payment of the soft drink excise tax. Where a product other than the above is produced, such product is subject to the tax unless otherwise exempt under this Article."~~

Sec. 278. G.S. 105-113.47 reads as rewritten:

" § 105-113.47. ~~Natural fruit or vegetable juice or natural liquid milk drinks exempted from tax. Registration of certain exempt bottled soft drinks and juice concentrates.~~

(a) Requirement. -- All bottled soft drinks containing thirty-five percent (35%) or more of natural fruit or vegetable juice and all bottled natural liquid milk drinks containing thirty-five percent (35%) or more of natural liquid milk, are exempt from the excise tax imposed by this Article, except that this exemption shall not apply to any fruit or vegetable juice drink to which has been added any coloring, artificial flavoring or preservative. Sugar, salt or vitamins shall not be construed to be an artificial flavor or preservative. To be exempt from the tax imposed by this Article, the following items must be registered with the Secretary as an exempt item:

- (1) A bottled soft drink that contains at least thirty-five percent (35%) natural milk measured by volume and is not exempt under G.S. 105-113.46(1).
- (2) A natural juice bottled soft drink.
- (3) A natural juice concentrate.

To register an item as exempt, the person who controls the brand name or formula of the item must file an application for registration with the Secretary on a form provided by the Secretary. An application must include an affidavit stating the complete and itemized formula by volume of the bottled soft drink or juice concentrate that is the subject of the application.

(b) Determination. -- Any bottled soft drink for which exemption is claimed under this section must be registered with the Secretary. No bottled soft drink shall be entitled to the exemption until registration has been accomplished by the filing of an application for exemption on such form as may be prescribed by the Secretary, which form shall include an affidavit setting forth the complete and itemized formula by volume of the drink therein referred to, and the failure to submit such affidavit shall be prima facie evidence that such bottled soft drink is

~~not exempt. All bottled soft drinks which are not so registered and do not have affixed thereto the proper stamps or crowns shall be subject to confiscation. The Secretary or his duly authorized representative may at any time check the formulas or the manufacturing of such bottled soft drinks for which exemption is claimed under this section and in addition thereto, the Secretary or his duly authorized representative may at any time take samples of any product for which exemption has been claimed, from any and all persons offering such product for sale for the purpose of ascertaining by analysis the contents thereof. The sample shall be clearly marked for identification and such sample may be turned over to any registered chemist designated by the Secretary for the purpose of analysis. If such investigation establishes that such bottled soft drink contains less than thirty-five percent (35%) by volume of natural fruit juice, natural vegetable juice or natural liquid milk, or if any person engaged in selling, manufacturing, purchasing, consigning, using, shipping or distributing for the purpose of sale within this State who has applied for an exemption hereunder fails or refuses to allow the Secretary or his duly authorized representative to check the formulas or inspect the manufacturing of such bottled soft drinks, the excise tax imposed by this Article shall apply to all sales of such products and all such products offered for sale and not properly stamped shall be subject to confiscation until such person permits the Secretary to examine the formulas or inspect the manufacturing of such bottled soft drinks. The Secretary shall determine whether a bottled soft drink or a juice concentrate for which an application for registration is filed meets the criteria for exemption. To make the determination, the Secretary or a representative of the Secretary may require the person who filed the registration application for the item or anyone who sells the item in this State to provide a sample of the item and may have the sample analyzed by a chemist to verify the accuracy of the submitted formula.~~

~~(c) No Disclosure. -- Except as required by law or allowed under this subsection, in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Secretary or any deputy, agent, clerk or other officer or employee or any other person acting in a confidential relationship with an agent or employee of the Secretary to divulge or make known in any manner any formula or any particulars of any may not disclose part or all of the formula of an item pertaining to any drink hereinabove referred to, for which an application for registration is filed. However, such prohibition shall not be construed to prohibit the publication of whether or not such bottled soft drinks contain thirty-five percent (35%) or more of natural fruit or vegetable juice or thirty-five percent (35%) or more of natural liquid milk, nor shall it be construed to prohibit the inspection by the~~

~~Attorney General or other legal representative of the State of the formula of any taxpayer who shall bring action to set aside or review the tax base thereon or against whom an action or proceeding has been instituted to recover any tax imposed by this Article. The Secretary may disclose whether an item meets the exemption criteria and the Attorney General or other legal representative of the State may examine the formula for an item if the grant or denial of an exemption for the item is challenged.~~

~~(d) Effect. -- Where any product for which exemption is claimed under this section is found to contain less than thirty-five percent (35%) by volume of natural fruit juice, natural vegetable juice, or natural liquid milk, the excise tax imposed by this Article shall apply to all sales of such product, and all such products offered for sale and not properly stamped shall be subject to confiscation. Registration as an exempt item applies prospectively to sales of the registered bottled soft drink or registered juice concentrate made on or after the date of registration. Registration does not relieve a person of liability for taxes due on sales made before the date an item is registered."~~

~~Sec. 279. G.S. 105-113.50 reads as rewritten:~~

~~" § 105-113.50. Soft drink licenses required.~~

~~(a) Distributors and Wholesale Dealers. -- Distributors and wholesale dealers shall obtain for each place of business a continuing soft drink license for which a fee of twenty-five dollars (\$25.00) shall be paid. For the purpose of this section, subsection, 'place of business' means any place where a distributor makes bottled soft drinks or base products are manufactured by a distributor, or any place where unstamped bottled soft drinks, soft drink syrups and powders, base products and other items taxed under this Article are received or stored by a distributor or wholesale dealer, a distributor or a wholesale dealer receives or stores non-tax-paid bottled soft drinks or non-tax-paid base products.~~

~~(b) Out-of-state distributors and wholesale dealers may obtain appropriate distributors' or wholesale dealers' licenses upon compliance with the provisions of this Article and such regulations and administrative rules as may be issued by the Secretary hereunder, for which a fee of twenty-five dollars (\$25.00) shall be paid for each such soft drink license.~~

~~(c) Retail Dealers. -- Each retail dealer manufacturing or purchasing not previously taxed syrups, powders or base products shall secure Retail dealers shall obtain for each place of business a continuing soft drink license for which a fee of five dollars (\$5.00) shall be paid for each place of business at which such unstamped syrups, powders or base products are received or at which place such retail dealer manufactures them, paid. For the purpose of this~~

subsection, 'place of business' means any place where a retail dealer receives non-tax-paid bottled soft drinks or non-tax-paid base products or makes bottled soft drinks or base products.

~~(d) Distributors, wholesale dealers and retail dealers licensed under this section shall file such reports with the Secretary as he may require not later than the fifteenth day of each month showing transactions for the preceding month."~~

Sec. 280. G.S. 105-113.50A reads as rewritten:

" § 105-113.50A. *Local taxation.*

Except as authorized by G.S. 105-79, ~~no county, city or town shall levy any 105-102.5(e), a county or city may not levy a privilege license tax upon the business of bottling, manufacturing, producing, purchasing, selling at wholesale or retail, jobbing, consigning, using, shipping shipping, or distributing for the purpose of sale within this State bottled soft drinks in bottles or other closed containers, drinks or base products."~~

Sec. 281. G.S. 105-113.51 reads as rewritten:

~~" § 105-113.51. *Affixing of crowns and stamps to containers; crowns and stamps not transferable. Liability for and payment of excise taxes.*~~

~~(a) Any bottled soft drink offered for sale shall within 24 hours of its manufacture or receipt in this State have affixed to it a North Carolina taxpaid stamp or a North Carolina taxpaid crown at the rate provided for in this Article, unless the tax has been or will be paid according to some other method available under the provisions of this Article.~~

~~(b) The distributor or dealer who first distributes, sells, uses, consumes or handles bottled soft drinks, syrups, powders, base products and other items subject to the soft drink excise tax is subject to the tax unless taxpaid stamps or crowns have previously been affixed. The distributor, wholesale dealer or retail dealer, or any person who is the original consignee of any bottled soft drink, soft drink syrup, powder, base product or other item subject to the soft drink excise tax manufactured or produced outside this State, or who brings such into this State, shall pay the excise tax.~~

~~(c) Taxpaid stamps shall be affixed to each individual container of soft drink syrups, powders, and base products by wholesale dealers or distributors within 48 hours after such syrups, powders, or base products are received or made by them and by retail dealers within 24 hours after such syrups, powders or base products are received by them, and in any event the containers must be stamped before such products are used in the preparation of soft drinks.~~

~~(d) The payment of the excise tax provided for in this Article shall be evidenced by the affixing of taxpaid stamps or crowns to the original containers and the stamps and crowns provided for in this~~

~~Article shall not be transferable to any person other than their original purchaser.~~

~~(e) Notwithstanding any other provision of this Article, the excise tax levied upon powders, as herein defined, may be made and evidenced in accordance with rules and regulations of the Secretary.~~

~~(a) Primary Liability. -- The distributor, wholesale dealer, or retail dealer who first distributes, sells, consumes, or otherwise handles bottled soft drinks or base products in this State is liable for the tax imposed by this Article. A distributor, wholesale dealer, or retail dealer who brings into this State a bottled soft drink or base product made outside the State is the first person to handle the bottled soft drink or base product in this State. A distributor, wholesale dealer, or retail dealer who is the original consignee of a bottled soft drink or base product that is made outside the State and is shipped into the State is the first person to handle the bottled soft drink or base product in this State.~~

~~(b) Secondary Liability. -- A retail dealer who acquires non-tax-paid bottled soft drinks or non-tax-paid base products from a distributor or a wholesale dealer is liable for any tax due on the bottled soft drinks or base products. A retail dealer who is liable for tax under this subsection may not deduct a discount from the amount of tax due when reporting the tax.~~

~~(c) Monthly Report. -- Except for tax on a designated sale under subsection (d), the taxes levied by this Article are payable when a report is required to be filed. A report is due on a monthly basis. A monthly report covers sales and other activities occurring in a calendar month and is due within 15 days after the end of the month covered by the report. A report shall be filed on a form provided by the Secretary and shall contain the information required by the Secretary.~~

~~(d) Designation of Exempt Sale. -- A distributor or a wholesale dealer who sells a bottled soft drink or a base product to a person who has notified the distributor or wholesale dealer in writing that the person intends to resell the item in a transaction that is exempt from tax under G.S. 105-113.46(7) or (8) may, when filing a monthly report under subsection (c), designate the quantity of bottled soft drinks or base products sold to the person for resale. A distributor or wholesale dealer shall report a designated sale on a form provided by the Secretary.~~

~~A distributor or a wholesale dealer is not required to pay tax on a designated sale when filing a monthly report. The distributor or wholesale dealer shall pay the tax due on all other sales in accordance with this section. A distributor, a wholesale dealer, or a customer of a distributor or wholesale dealer may not delay payment of the tax due on a bottled soft drink or base product by failing to pay tax on a sale~~

that is not a designated sale or by overstating the quantity of bottled soft drinks or base products that will be resold in a transaction exempt under G.S. 105-113.46(7) or (8).

A person who does not sell a bottled soft drink or base product in a transaction exempt under G.S. 105-113.46(7) or (8) after a distributor or a wholesale dealer has failed to pay the tax due on the sale of the item to the person in reliance on the person's written notification of intent is liable for the tax and any penalties and interest due on the designated sale. If the Secretary determines that a bottled soft drink or a base product reported as a designated sale is not sold as reported, the Secretary shall assess the person who notified the distributor or wholesale dealer of an intention to resell the item in an exempt transaction for the tax due on the sale and any applicable penalties and interest. A distributor or a wholesale dealer who does not pay tax on a bottled soft drink or base product in reliance on a person's written notification of intent to resell the item in an exempt transaction is not liable for any tax assessed on the item.

(e) Refund. -- A distributor, a wholesale dealer, or a retail dealer who pays tax on a bottled soft drink or a base product that is exempt from the tax may obtain a refund for the amount of tax paid by filing an application for refund with the Secretary on a form provided by the Secretary. An application for a refund must be submitted within the time allowed by G.S. 105-266 or G.S. 105-266.1."

Sec. 282. G.S. 105-113.52 reads as rewritten:

"§ 105-113.52. ~~Taxpaid stamps; rules and regulations; cancellation; discount. Tax reduction and discount.~~

~~(a) The Secretary shall make arrangements with some manufacturer to manufacture the taxpaid stamps provided for in this Article. The Secretary shall prescribe the form, design, denominations and such other matters as may be necessary with respect to said stamps. The Secretary may sell such stamps directly to taxpayers and may also make arrangements for release of taxpaid stamps to taxpayers by the manufacturer. Said manufacturer shall furnish such bond as the Secretary may deem advisable, in such penalty and upon such conditions as in the opinion of the Secretary will adequately protect the State in the collection of the excise tax imposed by this Article. Such bond shall be executed by the manufacturer as principal and by an indemnity company licensed to do business under the insurance laws of this State, as surety. The costs of manufacture, transportation and distribution of said stamps shall be computed in accordance with administrative rules or regulations of the Secretary and payment thereof pursuant to such rules and regulations of the Secretary may be required in addition to the amount of taxes which said stamps evidence regardless of whether said stamps are released or distributed by the~~

~~Secretary or by the manufacturer pursuant to authorization from the Secretary.~~

~~(b) Upon the sale of taxpaid stamps, the Secretary shall allow a discount of five percent (5%) of the entire amount of any sale of fifty dollars (\$50.00) or more of said stamps. On sales of stamps of less than fifty dollars (\$50.00), no discount shall be allowed. Such discount shall apply only to the tax and not the manufacturer's price or transportation or distribution costs.~~

~~(c) When stamps are attached to bottled soft drinks, or to containers of soft drink powders or base products, no cancellation or obliteration of them shall be required, but stamps affixed to containers of syrup to be used at soda fountains shall be canceled by the person affixing them by writing or stamping with ink or indelible pencil across the stamps his initials or name and the date on which the stamps were affixed. When the container to which the stamp has been affixed has been emptied, the stamp must be obliterated by making at least three incisions crisscross through the stamp with a knife or other sharp instrument.~~

~~(d) Any person who makes use of any stamp to denote the payment of the tax imposed by this Article without canceling or obliterating such stamps if required to do so by this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars (\$100.00) or be imprisoned for not more than 30 days for each offense.~~

(a) Tax Reduction. -- The tax on the first 15,000 gross of bottled soft drinks sold at wholesale on or after October 1 of each year by a distributor or wholesale dealer who is liable for the tax is seventy-two cents (72¢) a gross rather than the amount stated in G.S. 105-113.45. When reporting tax due on bottled soft drinks to which this reduced rate applies, a distributor or wholesale dealer shall pay the reduced amount.

(b) Discount. -- A distributor, a wholesale dealer, or a retail dealer who is liable for the excise taxes on bottled soft drinks or base products and who files a timely report under G.S. 105-113.51 may deduct from the amount due with the report a discount of four percent (4%). This discount covers losses due to spoilage and breakage, expenses incurred in preparing the records and reports required by this Article, and the expense of furnishing a bond. The discount does not apply to taxes paid at the rate set in subsection (a)."

Sec. 283. G.S. 105-113.53 reads as rewritten:

" § 105-113.53. Stamps not required when crowns used. Bonds.

If a distributor of bottled soft drinks either within or without the State shall use taxpaid crowns as hereinafter provided, such distributor shall be relieved of the duty of affixing taxpaid stamps to each

~~individual bottle. Whenever the Secretary deems it to be advantageous for the effective and efficient enforcement of this Article, he may require that such crowns be used in lieu of stamps. The Secretary may require a distributor, a wholesale dealer, or a retail dealer to furnish a bond in an amount that adequately protects the State from loss if the distributor or dealer fails to pay taxes due under this Article. A bond shall be conditioned on compliance with this Article, shall be payable to the State, and shall be in the form required by the Secretary. The Secretary shall proportion a bond amount to the anticipated tax liability of the distributor, wholesale dealer, or retail dealer. The Secretary shall periodically review the sufficiency of bonds required of distributors, wholesale dealers, and retail dealers and shall increase the amount of a required bond when the amount of the bond furnished no longer covers the anticipated tax liability of the distributor or dealer. The Secretary shall decrease the amount of a required bond when the Secretary determines that a smaller bond amount will adequately protect the State from loss."~~

Sec. 284. G.S. 105-113.57 reads as rewritten:

"§ 105-113.57. Records required of ingredients received."

~~Every person engaged in the business of making, mixing or compounding bottled soft drinks, soft drink syrups and powders, base products and other items taxed under this Article shall keep a distinct, legible and permanent record of all extracts, flavoring, sugar, syrup or other ingredients except water received by him that may be useful in making, mixing or compounding soft drinks, and he making bottled soft drinks or base products shall keep a record of the ingredients purchased to make the bottled soft drinks or base products and shall retain invoices on all such the purchases for a period of not less than three years from the date thereof. Such records shall show the quantity of such commodities received, the date of receipt thereof at least three years. The records shall show the quantity of ingredients purchased, the date received, and the name of the person from whom they were secured or received and shall be open at all times for inspection by the Secretary or his duly authorized representative, received. The records shall be open at all times for inspection by the Secretary or a representative of the Secretary."~~

Sec. 285. G.S. 105-113.58 reads as rewritten:

"§ 105-113.58. Records of ~~sale~~ sales, inventories, and purchases to be kept."

~~Every distributor, wholesale dealer, and retail dealer shall keep an accurate account of all daily sales, sales slips, bills, invoices, delivery slips, statements, bills of lading, freight bills, credit memoranda and similar documents for a period of not less than three years from the date shown thereon. All such records of the~~

distributor's or dealer's purchases, inventories, and sales of bottled soft drinks and base products. These records shall be kept for three years and shall be open at all times for inspection by the Secretary or his duly authorized representative, representative of the Secretary."

Sec. 286. G.S. 105-113.43, 105-113.48, 105-113.49, 105-113.54 through 105-113.56C, 105-113.59 through 105-113.62, 105-113.66, and 105-113.67 are repealed.

Sec. 287. The Secretary of Revenue shall redeem any unused or mutilated but identifiable tax stamps or crowns purchased pursuant to Article 2B of Chapter 105 of the General Statutes that a taxpayer presents for redemption and shall refund the face value of the stamps or crowns, less the discount allowed at the time of the purchase of the stamps or crowns by the taxpayer.

Sec. 288. The Secretary of Revenue shall review the registrations of bottled soft drinks and juice concentrates made under G.S. 105-113.47 before the effective date of this Part. The Secretary shall notify those registrants who no longer appear to meet the exemption criteria that, for the bottled soft drink or juice concentrate to continue to be exempt from the excise tax imposed by Article 2B of Chapter 105 of the General Statutes, a new registration application must be submitted. The excise tax imposed by Article 2B of Chapter 105 of the General Statutes applies to a previously registered bottled soft drink or juice concentrate unless the Secretary determines from the new application that the bottled soft drink or juice concentrate continues to meet the exemption criteria.

PART 51.-----INSURANCE TAX CHANGES AND REGULATORY CHARGE

Sec. 289. Article 6 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-6-25. Insurance regulatory charge.

(a) Charge Levied. There is levied on each insurance company an annual charge to defray the cost to the Department of regulating the insurance industry and other industries and the general administrative expenses of the State incident thereto. As used in this section, the term 'insurance company' means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does not include a hospital, medical, or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term 'insurance company' does not include a company regulated under Article 67 of this Chapter. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable

year. In determining an insurance company's premium tax liability for a taxable year, additional taxes imposed by G.S. 105-228.8 shall be disregarded.

(b) Rates. The rate of the charge for the 1991 taxable year shall be six and five-tenths percent (6.5%). For subsequent taxable years, the rate shall be the percentage rate established by the General Assembly. When the Department prepares its budget request for each upcoming fiscal year, the Department shall propose a percentage rate of the charge levied in this section. The Governor shall submit that proposed rate to the General Assembly each fiscal year. The General Assembly shall set by law the percentage rate of the charge levied in this section. The percentage rate may not exceed the rate necessary to generate funds sufficient to defray the estimated cost of the operations of the Department for each upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed one-third of the estimated cost of operating the Department for each upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Department or a possible unanticipated increase or decrease in North Carolina premiums or other charge revenue.

(c) Returns; When Payable. The charge levied on each insurance company is payable at the time the insurance company remits its premium tax. If the insurance company is required to remit installment payments of premiums tax under G.S. 105-228.5 for a taxable year, it shall also remit installment payments of the charge levied in this section for that taxable year at the same time and on the same basis as the premium tax installment payments. Each installment payment shall be equal to at least thirty-three and one-third percent (33.3%) of the insurance company's regulatory charge liability incurred in the immediately preceding taxable year.

Every insurance company shall, on or before the date the charge levied in this section is due, file a return on a form prescribed by the Commissioner. The report shall state the company's total North Carolina premiums for the taxable year and shall be accompanied by any supporting documentation that the Commissioner may by rule require.

(d) Use of Proceeds. The Department of Insurance Fund is created in the State treasury. The proceeds of the charge levied in this section and all fees collected under Articles 69 through 71 of this Chapter and under Articles 9 and 9C of Chapter 143 of the General Statutes shall be credited to the Fund. The Fund shall be placed in an interest-bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund may be

spent only pursuant to appropriation by the General Assembly. The Fund is subject to the provisions of the Executive Budget Act, except that no unexpended surplus of the Fund shall revert to the General Fund. All money credited to the Fund shall be used only to pay the expenses of the Commissioner and the Department that are incurred in regulating the insurance industry and other industries in this State and the general administrative expenses of the State incident thereto."

Sec. 290. Notwithstanding the provisions of G.S. 58-6-25, as enacted by this act, each insurance company subject to the charge levied under G.S. 58-6-25 who must pay an installment payment of the premium tax levied under G.S. 105-228.5 and G.S. 105-228.8 for the 1991 taxable year shall pay an installment payment of the charge levied in G.S. 58-6-25 for the 1991 taxable year on or before October 15, 1991. This installment payment shall be equal to three and twenty-five hundredths percent (3.25%) of the company's premium tax liability for the immediately preceding taxable year. The balance of the charge imposed for the 1991 taxable year shall be remitted by March 15, 1992.

Sec. 291. G.S. 105-228.8(e) reads as rewritten:

"(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, to the special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on premiums. For purposes of this section, seventy-five percent (75%) of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall not be a special purpose obligation or assessment or a dedicated special purpose tax within the meaning of this subsection."

Sec. 292. G.S. 58-69-40 reads as rewritten:

"§ 58-69-40. *Disposition of fees.*

In the event an application for license filed hereunder is not approved, the Commissioner shall retain ten dollars (\$10.00) of the fee paid to him in connection with ~~said application~~, the application and return the balance to the applicant. All fees collected by the Commissioner ~~hereunder shall be available to the Department of Insurance for paying the expense incurred in connection with the administration of this Article~~, under this Article shall be credited to the Department of Insurance Fund created under G.S. 58-6-25."

Sec. 293. G.S. 58-70-45 reads as rewritten:

"§ 58-70-45. *Disposition of permit fees.*

All permit fees collected ~~hereunder~~ under this Article shall be credited to the ~~account of the Commissioner for the specific purpose of providing the personnel, equipment and supplies necessary to enforce~~

~~this Article, but the State Budget Officer shall have the right to budget the revenues received in accordance with the requirements of the Commissioner for the purposes herein required, and at the end of the fiscal year, if any sum whatever shall remain to the credit of the Commissioner, derived from the sources herein referred to, the same shall revert to the general treasury of the State to be appropriated as other funds. Department of Insurance Fund created under G.S. 58-6-25."~~

Sec. 294. G.S. 58-71-180 reads as rewritten:

" § 58-71-180. Disposition of fees.

Fees collected by the Commissioner pursuant to this Article shall be ~~paid into the general fund of the State, credited to the Department of Insurance Fund created under G.S. 58-6-25."~~

Sec. 295. Article 9C of Chapter 143 of the General Statutes is amended by adding a new section to read:

" § 143-151.21. Disposition of fees.

Fees collected by the Commissioner under this Article shall be credited to the Department of Insurance Fund created under G.S. 58-6-25."

Sec. 296. The Commissioner of Insurance shall, from time to time as the balance of the Fund in G.S. 58-6-25 attains levels sufficient to carry out the purposes in G.S. 58-6-25, transfer money from the Department of Insurance Fund to the General Fund to repay the money appropriated to the Department of Insurance from the General Fund for the 1991-92 fiscal year, plus accrued interest at a rate determined by the State Treasurer from the date the money is withdrawn from the General Fund.

Sec. 297. G.S. 105-228.5 reads as rewritten:

" § 105-228.5. Taxes measured by gross premiums.

Every insurance company and every Articles 65 and 66 of Chapter 58 corporation shall pay to the Commissioner of Insurance, at the time and rates provided in this section, a tax measured by gross premiums from business done in this State during the preceding calendar year, or, for Articles 65 and 66 of Chapter 58 corporations, a tax measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by such corporations during the preceding calendar year.

Gross premiums from business done in this State in the case of life insurance and annuity contracts, including any supplemental contracts thereto providing for disability benefits, accidental death benefits, or other special benefits, shall for the purposes of the taxes levied in this section mean any and all premiums collected in the calendar year (other than for contracts for reinsurance) for policies the premiums on which are paid by or credited to persons, firms or corporations

resident in this State, or in the case of group policies for any contracts of insurance covering persons resident within this State, with no deduction for considerations paid for annuity contracts which are subsequently returned except as below specified, and with no other deduction whatsoever except for premiums returned under one or more of the following conditions: premiums refunded on policies rescinded for fraud or other breach of contract; premiums which were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate; and in the case of group annuity contracts the premiums returned by reason of a change in the composition of the group covered. Said gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend or in any other manner whatsoever, except in the case of premiums waived by any of said companies pursuant to a contract for waiver of premium in case of disability.

An insurer, in computing its premium taxes, shall pay premium taxes on a premium for the purchase of annuities at the time the contract holder elects to commence annuity benefits, instead of at the time the premium is collected.

Every insurer, in computing the premium tax, shall exclude from the gross amount of premiums all premiums received on or after July 1, 1973, from policies or contracts, issued in connection with the funding of a pension, annuity or profit-sharing plan, qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the Code as defined in G.S. 105-134.1(1) and the gross amount of all such premiums shall be exempt from the tax levied by this section.

Gross premiums from business done in this State in the case of contracts for fire insurance, casualty insurance, and any other type of insurance except life and annuity contracts as above specified, including contracts of insurance required to be carried by the Workers' Compensation Act, shall for the purposes of the taxes levied in this section mean any and all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether such premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for such premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for

additional insurance, and without any other deduction except for return of premiums, deposits, fees or assessments for adjustment of policy rates or for cancellation or surrender of policies.

In determining the amount of gross premiums from business in this State all gross premiums received in this State, or credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property or risks resident or located in this State except for such premiums as are properly reported and properly allocated as being received from business done in some other nation, territory, state or states, and except for premiums from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

The tax rate to be applied to gross premiums collected on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The tax rate to be applied to gross premiums collected on annuities and all other insurance contracts issued by insurers shall be ~~one and seventy-five hundredths percent (1.75%),~~ one and eight hundred seventy-five thousandths percent (1.875%) for taxable years beginning on or after January 1, 1991, and before January 1, 1992, and one and nine-tenths percent (1.9%) for taxable years beginning on or after January 1, 1992. The tax rate to be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage (except marine and automobile policies) shall be one and thirty-three hundredths percent (1.33%) in addition to the ~~one and seventy-five hundredths percent (1.75%)~~ above tax. Twenty-five percent (25%) of the net proceeds of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall be deposited in the Rural Volunteer Fire Department Fund established in Articles 84 through 88 of Chapter 58 of the General Statutes. Effective July 1, 1988, the tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Articles 65 and 66 of Chapter 58 corporations shall be one-half of one percent ($1/2$ of 1%).

The taxes levied herein measured by premiums and/or membership dues shall be in lieu of all other taxes upon insurance companies except: ~~fees and licenses~~ fees, charges, and licenses under this Article, or as specified in Articles 1 through 64 of Chapter 58 of the General Statutes of North Carolina as amended; taxes imposed by Articles 84 through 88 of Chapter 58 of the General Statutes of North Carolina; taxes imposed by Article 5 of Chapter 105 of the General Statutes of North Carolina as amended; and ad valorem taxes upon real property and personal property owned in this State.

For the tax above levied as measured by gross premiums and/or gross collections from membership dues exclusive of receipts from cost plus plans the president, secretary, or other executive officer of each insurance company and Articles 65 and 66 of Chapter 58 corporation doing business in this State shall within the first 15 days of March file with the Commissioner of Insurance a full and accurate report of the total gross premiums as above defined or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. The report shall be in such form and contain such information as the Commissioner of Insurance may specify, and the report shall be verified by the oath of the company official transmitting the same or by some principal officer at the home or head office of the company or association in this country. At the time of making such report the taxes above levied with respect to the gross premiums or the gross collections from membership dues shall be paid to the Commissioner of Insurance. The provisions above shall likewise apply as to reports and taxes for any firm, corporation, or association exchanging reciprocal or interinsurance contracts, and said reports and taxes shall be transmitted by their attorneys-in-fact.

Insurance companies and Articles 65 and 66 of Chapter 58 corporations subject to the tax imposed by this section with a premium tax liability of ten thousand dollars (\$10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least ~~twenty-seven and one-half percent (27 1/2%)~~ thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns. ~~For taxable years beginning on or after January 1, 1989, each of the three quarterly installments shall be equal to at least thirty-three and one-third percent (33 1/3%) and payment of these installments shall be made on or before April 15, June 15, and October 15 of each taxable year. The balance shall be remitted by the following March 15 in the same manner provided in this section for annual returns.~~

The Commissioner of Insurance may, by regulation, permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

If a company does not meet the installment payment requirement of this section, the Commissioner of Insurance shall assess a penalty on underpayments that is equal to the interest rate adopted by the Secretary of Revenue under G.S. 105-241.1(i). Any overpayment shall be credited to the company and applied against the taxes imposed upon the company under this Article.

The provisions as to reports and taxes as measured by gross premiums shall not apply to farmers' mutual assessment fire insurance companies or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members.

With respect to the taxes levied in this section on the equivalent of premiums of self-insurers under the provisions of the Workers' Compensation Act, the reports required herein shall be transmitted to and the taxes collected by the Insurance Commissioner as provided in G.S. 97-100(j)."

Sec. 298. Article 8B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-228.5A. Credit against gross premium tax for assessments paid to the Insurance Guaranty Association and the Life and Accident and Health Insurance Guaranty Association.

(a) The following definitions apply in this section:

- (1) Assessment. -- An assessment as described in G.S. 58-48-35 or an assessment as described in G.S. 58-62-40.
- (2) Association. -- The North Carolina Insurance Guaranty Association created under G.S. 58-48-25 or the Life and Accident and Health Insurance Guaranty Association created under G.S. 58-62-25.
- (3) Commissioner. -- Commissioner of Insurance.
- (4) Member insurer. -- A member insurer as defined in G.S. 58-48-20 or a member insurer as defined in G.S. 58-62-20.

(b) A member insurer who pays an assessment is allowed as a credit against the tax imposed under G.S. 105-228.5 an amount equal to twenty percent (20%) of the amount of the assessment in each of the five taxable years following the year in which the assessment was paid. In the event a member insurer ceases doing business, all assessments for which it has not taken a credit under this section may be credited against its premium tax liability for the year in which it ceases doing business. The amount of the credit allowed by this section may not exceed the member insurer's premium tax liability for the taxable year.

(c) Any sums that are acquired by refund, under either G.S. 58-48-35 or G.S. 58-62-40, from the Association by member insurers, and that have previously been offset against premium taxes as provided in subsection (b) of this section, shall be paid by the member insurers

to this State in the manner required by the Commissioner. The Association shall notify the Commissioner that the refunds have been made."

Sec. 299. G.S. 58-48-75 is repealed.

PART 52.-----INDIVIDUAL INCOME TAX CHANGES

Sec. 300. G.S. 105-134.2(a) reads as rewritten:

"(a) A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

- (1) For married individuals who file a joint return under G.S. 105-152.1 and for surviving spouses, as defined in section 2(a) of the Code:

On the North Carolina taxable income up to twenty-one thousand two hundred fifty dollars (\$21,250), six percent ~~(6%); and (6%)~~.

On the ~~excess~~ amount over twenty-one thousand two hundred fifty dollars ~~(\$21,250)~~, (\$21,250) and up to one hundred thousand dollars (\$100,000), seven percent (7%).

On the amount over one hundred thousand dollars (\$100,000), seven and seventy-five one-hundredths percent (7.75%).

- (2) For heads of households, as defined in section 2(b) of the Code:

On the North Carolina taxable income up to seventeen thousand dollars (\$17,000), six percent ~~(6%); and (6%)~~.

On the ~~excess~~ amount over seventeen thousand dollars ~~(\$17,000)~~, (\$17,000) and up to eighty thousand dollars (\$80,000), seven percent (7%).

On the amount over eighty thousand dollars (\$80,000), seven and seventy-five one-hundredths percent (7.75%).

- (3) For unmarried individuals other than surviving spouses and heads of households:

On the North Carolina taxable income up to twelve thousand seven hundred fifty dollars (\$12,750), six percent ~~(6%); and (6%)~~.

On the ~~excess~~ amount over twelve thousand seven hundred fifty dollars ~~(\$12,750)~~, (\$12,750) and up to

sixty thousand dollars (\$60,000), seven percent (7%).

On the amount over sixty thousand dollars (\$60,000), seven and seventy-five one-hundredths percent (7.75%).

- (4) For married individuals who do not file a joint return under G.S. 105-152.1:

On the North Carolina taxable income up to ten thousand six hundred twenty-five dollars (\$10,625), six percent ~~(6%)~~; and (6%).

On the ~~excess~~ amount over ten thousand six hundred twenty-five dollars ~~(\$10,625)~~, (\$10,625) and up to fifty thousand dollars (\$50,000), seven percent (7%).

On the amount over fifty thousand dollars (\$50,000), seven and seventy-five one-hundredths percent (7.75%)."

Sec. 301. G.S. 105-131.7(c) reads as rewritten:

"(c) An S Corporation shall file with the Department, on a form prescribed by the Secretary, the agreement of each nonresident shareholder of the corporation (i) to file a return and make timely payment of all taxes imposed by this State on the shareholder with respect to the income of the S Corporation, and (ii) to be subject to personal jurisdiction in this State for purposes of the collection of any unpaid income tax, together with related interest and penalties, owed by the nonresident shareholder. If the corporation fails to timely file an agreement required by this subsection on behalf of any of its nonresident shareholders, then the corporation shall at the time specified in subsection (d) of this section pay to the Department on behalf of each nonresident shareholder with respect to whom an agreement has not been timely filed ~~an amount equal to seven percent (7%) of an estimated amount of the tax due the State.~~ The estimated amount of tax due the State shall be computed at the rates levied in G.S. 105-134.2(a)(3) on the shareholder's pro rata share of the S Corporation's income attributable to the State reflected on the corporation's return for the taxable period. An S Corporation may recover a payment made pursuant to the preceding sentence from the shareholder on whose behalf the payment was made."

Sec. 302. G.S. 105-160.2 reads as rewritten:

"§ 105-160.2. *Imposition of tax.*

The tax imposed by this Division shall apply to the taxable income of estates and trusts as determined under the provisions of the Code except as otherwise provided in this Division. The taxable income of an estate or trust shall be the same as taxable income for such an estate or trust under the provisions of the Code, adjusted as provided

in G.S. 105-134.6 and G.S. 105-134.7, except that the adjustments provided in G.S. 105-134.6 and G.S. 105-134.7 shall be apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. The tax shall be computed ~~at the following percentages of~~ on the amount of the taxable income of ~~an~~ the estate or trust ~~which that~~ is for the benefit of a resident of this State, or for the benefit of a nonresident to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State. For purposes of the preceding sentence, taxable income and gross income shall be computed subject to the adjustments provided in G.S. 105-134.6 and G.S. 105-134.7. The tax on the amount computed above shall be at the rates levied in G.S. 105-134.2(a)(3), shall be at six percent (6%) on the first twelve thousand seven hundred fifty dollars (\$12,750) of the amount computed above; and at seven percent (7%) of the excess of the amount computed above over twelve thousand seven hundred fifty dollars (\$12,750). The tax computed under the provisions of this Division shall be paid by the fiduciary responsible for administering the estate or trust."

Sec. 303. Notwithstanding G.S. 105-163.15, no addition to tax may be made under that statute for a taxable year beginning on or after January 1, 1991, and before January 1, 1992, with respect to an underpayment of individual income tax to the extent the underpayment was created or increased by this Part.

PART 53.-----ALCOHOL TAX CHANGES

Sec. 304. G.S. 18B-804, as amended by Chapter 565 of the 1991 Session Laws, reads as rewritten:

" § 18B-804. *Alcoholic beverage pricing.*

(a) Uniform Price of Spirituous Liquor. -- The retail price of spirituous liquor sold in ABC stores shall be uniform throughout the State, unless otherwise provided by the ABC law.

(b) Sale Price of Spirituous Liquor. -- The sale of spirituous liquor sold at the uniform State price shall consist of the following components:

- (1) The distiller's ~~price;~~ price.
- (2) The freight and bailment charges of the State warehouse as determined by the ~~Commission;~~ Commission.
- (3) A markup for local boards as determined by the ~~Commission;~~ Commission.

- (4) The tax levied under G.S. 105-113.80(c), which shall be levied on the sum of subdivisions (1), (2), and ~~(3)~~; (3).
 - (5) An additional markup for local boards equal to three and one-half percent (3 1/2%) of the sum of subdivisions (1), (2), and ~~(3)~~; (3).
 - (6) A bottle charge of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 ~~milliliters~~; milliliters.
 - (6a) The ~~bailment surcharge~~; surcharge.
 - (6b) An additional bottle charge for local boards of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 ~~milliliters~~~~(-)~~ milliliters.
 - (7) A rounding adjustment, the formula of which may be determined by the Commission, so that the sale price will be divisible by ~~five~~; and five.
 - (8) If the spirituous liquor is sold to a mixed beverage permittee for resale in mixed beverages, a charge of ~~fifteen dollars (\$15.00)~~ twenty dollars (\$20.00) on each four liters and a proportional sum on lesser quantities.
 - (9) If the spirituous liquor is sold to a guest room cabinet permittee for resale, a charge of fifteen dollars (\$15.00) on each four liters and a proportional sum on lesser quantities.
- (c) Sale Price of Fortified Wine. -- The sale price of fortified wine shall include the tax levied by G.S. 105-113.80(b), as well as State and local sales taxes.

(d) Repealed by Session Laws 1985, c. 59, s. 2."

Sec. 305. Effective October 1, 1991, G.S. 18B-804(b)(9), as enacted by Chapter 565 of the 1991 Session Laws, reads as rewritten:

- "(9) If the spirituous liquor is sold to a guest room cabinet permittee for resale, a charge of ~~fifteen dollars (\$15.00)~~ twenty dollars (\$20.00) on each four liters and a proportional sum on lesser quantities."

Sec. 306. G.S. 18B-805(b) reads as rewritten:

"(b) Primary Distribution. -- Before making any other distribution, a local board shall first pay the following from its gross receipts:

- (1) The board shall pay the expenses, including salaries, of operating the local ABC system.
- (2) Each month the local board shall pay to the Department of Revenue the taxes due the Department. In addition to the taxes levied under Chapter 105 of the General Statutes, the local board shall pay to the Department ~~one-third~~ one-half of the mixed beverages surcharge required by G.S. 18B-804(b)(8).

- (3) Each month the local board shall pay to the Department of Human Resources ~~six and two-thirds percent (62/3%)~~ five percent (5%) of the mixed beverages surcharge required by G.S. 18B-804(b)(8). The Department of Human Resources shall spend those funds for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse.
- (4) Each month the local board shall pay to the county commissioners of the county where the charge is collected the proceeds from the bottle charge required by G.S. 18B-804(b)(6), to be spent by the county commissioners for the purposes stated in subsection (h) of this section."

Sec. 307. G.S. 18B-902(d), as amended by Chapters 267 and 565 of the 1991 Session Laws, reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

- (1) On-premises malt beverage permit -- ~~\$100.00,~~ \$200.00.
- (2) Off-premises malt beverage permit -- ~~\$100.00,~~ \$200.00.
- (3) On-premises unfortified wine permit -- ~~\$100.00,~~ \$200.00.
- (4) Off-premises unfortified wine permit -- ~~\$100.00,~~ \$200.00.
- (5) On-premises fortified wine permit -- ~~\$100.00,~~ \$200.00.
- (6) Off-premises fortified wine permit -- ~~\$100.00,~~ \$200.00.
- (7) Brown-bagging permit -- \$200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be \$100.00.
- (8) Special occasion permit -- \$200.00.
- (9) Limited special occasion permit -- \$25.00.
- (10) Mixed beverages permit -- \$750.00.
- (11) Culinary permit -- \$100.00.
- (12) Unfortified winery permit -- \$100.00.
- (13) Fortified winery permit -- \$100.00.
- (14) Limited winery permit -- \$100.00.
- (15) Brewery permit -- \$100.00.
- (16) Distillery permit -- \$100.00.
- (17) Fuel alcohol permit -- \$10.00.
- (18) Wine importer permit -- \$100.00.
- (19) Wine wholesaler permit -- \$100.00.
- (20) Malt beverage importer permit -- \$100.00.
- (21) Malt beverage wholesaler permit -- \$100.00.
- (22) Bottler permit -- \$100.00.
- (23) Salesman permit -- \$25.00.
- (24) Vendor representative permit -- \$25.00.
- (25) Nonresident malt beverage vendor permit -- \$25.00.
- (26) Nonresident wine vendor permit -- \$25.00.

(27) Any special one-time permit under G.S. 18B-1002 -- \$25.00.

(28) Winery special event permit -- \$100.00.

(29) Guest room cabinet permit. -- \$750.00."

Sec. 308. G.S. 18B-902(e) reads as rewritten:

"(e) Fee for Combined Applications. -- If application is made at the same time for retail malt beverage, unfortified wine and fortified wine permits for a single business location, the total fee for those applications shall be ~~one hundred dollars (\$100.00)~~, two hundred dollars (\$200.00). If application is made at the same time for brown-bagging and special occasion permits for a single business location, the total fee for those applications shall be three hundred dollars (\$300.00). If application is made at the same time for wine and malt beverage importer permits, the total fee for those applications shall be one hundred dollars (\$100.00). If application is made at the same time for wine and malt beverage wholesaler permits, the total fee for those applications shall be one hundred dollars (\$100.00). If application is made in the same year for vendor representative permits to represent more than one vendor, only one fee shall be paid. If application is made at the same time for nonresident malt beverage vendor and nonresident wine vendor permits, the total fee for those applications shall be twenty-five dollars (\$25.00)."

Sec. 309. G.S. 105-113.75 reads as rewritten:

"§ 105-113.75. *State beer and wine retail licenses.*

A person holding any of the following retail ABC permits shall obtain a State license for the activity authorized by the permit. The annual tax for each license is as stated.

ABC Permit	Corresponding State License	Tax
On-premises malt beverage.	Retail malt beverage	<u>\$20.00</u>
off-premises malt beverage.		<u>\$100.00</u>
or both		
On-premises unfortified	Retail wine: on-	<u>25.00</u>
wine, on-premises fortified	premises	<u>100.00</u>
wine, or both		
Off-premises unfortified	Retail wine: off-	<u>20.00</u>
wine, off-premises fortified	premises	<u>100.00</u>
wine, or both".		

Sec. 310. G.S. 18B-1004 reads as rewritten:

" § 18B-1004. *Hours for sale and consumption.*

(a) Hours. -- Except as otherwise provided in this section, it shall be unlawful to sell malt beverages, unfortified wine, fortified wine, or mixed beverages between the hours of ~~4:00~~ 2:00 A.M. and 7:00 A.M., or to consume any of those alcoholic beverages between the hours of ~~4:30~~ 2:30 A.M. and 7:00 A.M., in any place ~~which~~ that has been issued a permit under G.S. 18B-1001.

~~(b) Daylight Saving Time. -- From the first Sunday in April until the last Sunday in October, sales of alcoholic beverages may continue until 2:00 A.M. rather than 1:00 A.M., and consumption of alcoholic beverages may continue until 2:30 A.M. rather than 1:30 A.M., on any licensed premises.~~

(c) Sunday Hours. -- It shall be unlawful to sell or consume alcoholic beverages on any licensed premises from the time at which sale or consumption must cease on Sunday morning until 1:00 P.M. on that day.

(d) Local Option. -- A city may adopt an ordinance prohibiting in the city the retail sale of malt beverages, unfortified wine, and fortified wine during any or all of the hours from 1:00 P.M. on Sunday until 7:00 A.M. on the following Monday. A county may adopt an ordinance prohibiting, in the parts of the county outside any city, the retail sale of malt beverages, unfortified wine, and fortified wine during any or all of the hours from 1:00 P.M. on Sunday until 7:00 A.M. on the following Monday. Neither a city nor a county, however, may prohibit those sales in establishments having brown-bagging or mixed beverages permits.

(e) This section does not prohibit at any time the wholesale delivery and sale of unfortified wine, fortified wine, and malt beverages to retailers issued permits pursuant to G.S. 18B-1001."

PART 54.-----SALES TAX CHANGES

Sec. 311. G.S. 105-164.4, as amended by Chapter 598 of the 1991 Session Laws, reads as rewritten:

" § 105-164.4. *Tax imposed on retailers.*

(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable ~~sales, or gross receipts from the lease or rental of tangible personal property, as appropriate;~~ sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

- (1) ~~At the rate of three percent (3%) of~~ The general rate of tax applies to the sales price of each item or article of tangible

personal property that is sold at retail and is not subject to tax under another subdivision in this section.

- (1a) ~~At the rate of two percent (2%) of~~ The rate of two percent (2%) applies to the sales price of each manufactured home sold at retail, including all accessories attached to the manufactured home when it is delivered to the purchaser, not to exceed three hundred dollars (\$300.00), purchaser. The maximum tax is three hundred dollars (\$300.00) per article. Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article.
- (1b) ~~At the rate of two percent (2%) of~~ The rate of three percent (3%) applies to the sales price of each aircraft, boat, railway car, or locomotive sold at retail, including all accessories attached to the item when it is delivered to the purchaser, not to exceed one thousand five hundred dollars (\$1,500), purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article.
- (1c) ~~At the rate of one percent (1%) of~~ The rate of one percent (1%) applies to the sales price on of the following items:
articles:
- a. Horses or mules by whomsoever sold.
 - b. Semen to be used in the artificial insemination of animals.
 - c. Sales of fuel, other than electricity or piped natural gas, to farmers to be used by them for any farm purposes other than preparing food, heating dwellings and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed herein.
 - d. Sales of fuel, other than electricity or piped natural gas, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the ~~one percent (1%) rate of tax imposed herein,~~ rate of tax provided in this subdivision.
 - e. Sales of fuel, other than electricity or piped natural gas, to commercial laundries or to pressing and dry-cleaning

establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

- f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.
- (1d) ~~At the rate of one percent (1%) of the sales price, subject to a maximum tax of eighty dollars (\$80.00) per article, on the following items:~~ The rate of one percent (1%) applies to the sales price of the following articles. The maximum tax is eighty dollars (\$80.00) per article.
- a. Sales of machines and machinery, whether animal or motor drawn or operated, and parts and accessories for such machines and machinery to farmers for use by them in the planting, cultivating, harvesting or curing of farm crops, and sales of machines and machinery and parts and accessories for such machines and machinery to dairy operators, poultry farmers, egg producers, and livestock farmers for use by them in the production of dairy products, poultry, eggs or livestock, except such machines, machinery, equipment, parts, and accessories that come within the provisions of G.S. 105-164.13(4c).

The term 'machines and machinery' as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

- b. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term 'manufacturing industries and plants' does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.
- c. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.
- d. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.
- e. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.
- f. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.
- g. Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.
- h. Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.
- i. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their

products when such containers do not go with and become part of the sale of their products at wholesale or retail.

- (2) ~~At the applicable percentage rate of~~ The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property.
- (3) Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. ~~There is levied upon every such retailer a tax of three percent (3%) of the gross receipts derived~~ A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term 'persons who rent to transients' means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including 'real estate brokers' as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

- (4) ~~Every person, firm or corporation~~ person engaged in the business of operating a ~~pressing club, cleaning plant, hat-blocking establishment, dry-cleaning plant, laundry (including wet or damp wash laundries and businesses known as launderettes and launderalls),~~ pressing, or hat-blocking establishment, a laundry, or any similar business, or engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business

~~for any of the aforementioned these businesses, shall be considered "retailers" for the purposes of this Article, is considered a retailer under this Article. There is hereby levied upon every such person, firm or corporation a tax of three percent (3%) of the gross receipts derived A tax at the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision, subdivision, and every person, firm or corporation subject to the provisions of this subdivision shall register and secure a license in the manner hereinafter provided in this section, and, insofar as practicable, all other provisions of this Article shall be applicable with respect to the tax herein provided for. The tax imposed by this subdivision does not apply to receipts derived from coin or token-operated washing machines, extractors, and dryers. The taxes levied in this subdivision are additional privilege or license taxes for the privilege of engaging in the occupations or businesses named herein. Any person, firm or corporation engaged in cleaning, pressing, hat blocking, laundering for, or supplying clean linen or towels or wearing apparel to, another person, firm or corporation engaged in soliciting shall not be required to pay the three percent (3%) tax on its gross receipts derived through such solicitor, if the soliciting person, firm or corporation has registered with the Department, secured the license hereinafter required and has paid the tax at the rate of three percent (3%) of the total gross receipts derived from business solicited. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services.~~

- (4a) ~~At the rate of three percent (3%) of~~ The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of electricity, piped natural gas, or local telecommunications service as defined by G.S. 105-120(e). Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158. A person who operates a utility is considered a retailer under this Article.
- (4b) A person who sells tangible personal property at a flea market, other than ~~his~~ the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on ~~that~~

~~person at the rate of three percent (3%) of the sales price of each article sold by him the retailer at the flea market. A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space furnishes evidence that he has obtained shows the license or a copy of the license required by this Article. Article or other evidence of compliance.~~ A person who leases or rents space at a flea market shall keep records of retailers ~~to whom he has~~ who have leased or rented space at the flea market. As used in this subdivision, the term 'flea market' means a place where space is rented to a person for the purpose of selling tangible personal property.

- (4c) ~~At the~~ The rate of six and one-half percent (6 1/2%) of applies to the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(e) that both originate from and terminate in the State and are not subject to the privilege tax under G.S. 105-120. Any business entity that provides ~~the service outlined above~~ these services is considered a retailer under this Article. This subdivision does not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.

(b) The tax levied in this section shall be collected from the retailer and paid by him at the time and in the manner as hereinafter provided. Provided, however, that any person engaging or continuing in business as a retailer shall pay the tax required on the net taxable sales of such business at the rates specified when proper books are kept showing separately the gross proceeds of taxable and nontaxable sales of tangible personal property in such form as may be accurately and conveniently checked by the Secretary or his duly authorized agent. If such records are not kept separately the tax shall be paid as a retailer on the gross sales of business and the exemptions and exclusions provided by this Article shall not be allowed. The tax levied in this section is in addition to all other taxes whether levied in the form of excise, license or privilege or other taxes.

(c) Any person who engages or continues in any business for which a privilege tax is imposed by this Article shall immediately after July 1, 1979, apply for and obtain from the Secretary upon payment of the sum of five dollars (\$5.00) a license to engage in and conduct such business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in and conduct such business. Except as hereinafter provided, a license issued under this subsection

shall be a continuing license until revoked for failure to comply with the provisions of this Article. However, any person who has heretofore applied for and obtained the license, if the license was in force and effect as of July 1, 1979, shall not be required to apply for and obtain a new license.

Any person who ceases to be engaged in any business for which a privilege tax is imposed by this Article, and who remains continuously out of business for a period of five years shall apply for and obtain a new license from the Secretary upon the payment of a tax of five dollars (\$5.00), and any license previously issued under this section shall be void. The burden of proof after such period shall be upon the taxpayer to show that he did engage in such business within the period, and that no new license is required.

A retailer who sells tangible personal property at a flea market shall conspicuously display his sales tax license when making sales at the flea market."

Sec. 312. G.S. 105-164.6(b) reads as rewritten:

~~"(b) There is hereby levied and there shall be collected from every person, firm, or corporation, an excise tax of three percent (3%) of the purchase price of all tangible personal property purchased or used which shall enter into or become a part of any building or other kind of structure in this State, including all materials, supplies, fixtures and equipment of every kind and description which shall be annexed thereto or in any manner become a part thereof. The tax shall be levied against the purchaser of such property. Provided, that where the purchaser is a contractor, the contractor and owner shall be jointly and severally liable for the tax, but the liability of the owner shall be deemed satisfied if before final settlement between them the contractor furnishes to the owner an affidavit certifying that the tax has been paid. Provided further, that where the purchaser is a subcontractor, the contractor and subcontractor shall be jointly and severally liable for the tax, but the liability of the contractor shall be deemed satisfied if before final settlement between them the subcontractor furnishes to the contractor an affidavit certifying that the tax has been paid. An excise tax at the general rate of tax set in G.S. 105-164.4 is imposed on the purchase price of tangible personal property purchased inside or outside the State that becomes a part of a building or other structure in the State. The purchaser of the property is liable for the tax. If the purchaser is a contractor, the contractor and owner are jointly and severally liable for the tax; if the purchaser is a subcontractor, the subcontractor and contractor are jointly and severally liable for the tax. The liability of an owner or a contractor who did not purchase the property is satisfied if the purchaser delivers~~

to the owner or contractor before final settlement between them an affidavit certifying that the tax has been paid."

Sec. 313. G.S. 105-164.10 reads as rewritten:

" § 105-164.10. *Retail bracket system.*

For the convenience of the retailer in collecting the tax due ~~at the rate of three percent (3%) and to facilitate the administration of this Article, every retailer engaged in or continuing within this State in a business for which a license, privilege or excise tax is required by this Article shall add to the sale price and collect from the purchaser on all taxable retail sales an amount equal to the following:~~

- ~~(1) No amount on sales of less than 10¢.~~
- ~~(2) 1¢ on sales of 10¢ and over but not in excess of 35¢.~~
- ~~(3) 2¢ on sales of 36¢ and over but not in excess of 70¢.~~
- ~~(4) 3¢ on sales of 71¢ and over but not in excess of \$1.16.~~
- ~~(5) Sales over \$1.16 -- straight 3% with major fractions governing.~~

~~Use of the above bracket does not relieve the retailer from the duty and liability to remit to the Secretary an amount equal to three percent (3%) of the gross receipts derived from all taxable retail sales subject to the three percent (3%) rate during the taxable period.~~

~~Whenever a sales or use tax is due at a rate of less than three percent (3%), the tax shall be computed by multiplying the sales or purchase price by the applicable rate and by rounding the result off to the nearest whole cent. The use of this method in computing the sales or use tax shall not relieve a taxpayer from the duty and liability of remitting to the Secretary an amount equal to the applicable rates times gross receipts subject to taxation at the lesser rates, under this Article, the Secretary shall prescribe tables that compute the tax due on sales by rounding off the amount of tax due to the nearest whole cent. The Secretary shall issue a separate table for each rate of tax that may apply to a sale, including the general rate established in G.S. 105-164.4, preferential rates, and combined State and local rates. Use of the tables prescribed by the Secretary does not relieve a retailer of liability for the applicable rate of tax due on the gross receipts or net taxable sales of the retailer."~~

Sec. 314. G.S. 105-164.13(18) reads as rewritten:

"(18) Funeral expenses, including coffins and caskets, not to exceed one thousand five hundred dollars (\$1,500). All other funeral expenses, including gross receipts for services rendered, shall be taxable at the ~~rate of three percent (3%),~~ general rate of tax set in G.S. 105-164.4. However, "services rendered" shall not include those services which have been taxed pursuant to G.S. 105-164.4(4), or to those services performed by any beautician, cosmetologist, hairdresser or barber employed

by or at the specific direction of the family or personal representative of a deceased; and 'funeral expenses' and 'services rendered' shall not include death certificates procured by or at the specific direction of the family or personal representative of a deceased. Where coffins, caskets or vaults are purchased direct and a separate charge is paid for services, the provisions of this subdivision shall apply to the total for both."

Sec. 315. G.S. 105-465 reads as rewritten:

"§ 105-465. *County election as to adoption of local sales and use tax.*

The board of elections of any county, upon the written request of the board of county commissioners thereof, or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen percent (15%) of the total number of votes cast in the county, at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether a one percent (1%) sales and use tax as hereinafter provided will be levied.

The special election shall be held under the same rules and regulations applicable to the election of members of the General Assembly. No new registration of voters shall be required. All qualified voters in the county who are properly registered not later than 21 days (excluding Saturdays and Sundays) prior to the election shall be entitled to vote at said election. The county board of elections shall give at least 20 days' public notice prior to the closing of the registration books for the special election.

The county board of election shall prepare ballots for the special election which shall contain the words, 'FOR the one percent (1%) local sales and use tax only on those items presently covered by the ~~three percent (3%)~~ four percent (4%) sales and use tax,' and the words, 'AGAINST the one percent (1%) local sales and use tax only on those items presently covered by the ~~three percent (3%)~~ four percent (4%) sales and use tax,' with appropriate squares so that each voter may designate his vote by his cross (X) mark.

The county board of elections shall fix the date of the special election; provided, however, that the special election shall not be held on the date of any biennial election for county officers, nor within 60 days thereof, nor within one year from the date of the last preceding special election under this section."

Sec. 316. G.S. 105-467 reads as rewritten:

"§ 105-467. *Scope of sales tax.*

The sales tax which may be imposed under this Article is limited to a tax at the rate of one percent (1%) of:

- (1) The sales price of those articles of tangible personal property now subject to the ~~three percent (3%)~~ general rate of sales tax imposed by the State under G.S. 105-164.4(a)(1) and (4b);
- (2) The gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the ~~three percent (3%)~~ general rate of sales tax imposed by the State under G.S. 105-164.4(a)(2);
- (3) The gross receipts derived from the rental of any room or lodging furnished by any hotel, motel, inn, tourist camp or other similar accommodations now subject to the ~~three percent (3%)~~ general rate of sales tax imposed by the State under G.S. 105-164.4(a)(3); and
- (4) The gross receipts derived from services rendered by laundries, dry cleaners, ~~cleaning plants and similar type and other~~ businesses now subject to the ~~three percent (3%)~~ general rate of sales tax imposed by the State under G.S. 105-164.4(a)(4).

The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in subdivisions (1) through (4) of this section.

The exemptions and exclusions contained in G.S. 105-164.13 and the refund provisions contained in G.S. 105-164.14 shall apply with equal force and in like manner to the local sales and use tax authorized to be levied and imposed under this Article. A taxing county shall have no authority, with respect to the local sales and use tax imposed under this Article to change, alter, add to or delete any refund provisions contained in G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-164.13 or which are elsewhere provided for.

The local sales tax authorized to be imposed and levied under the provisions of this Article shall apply to such retail sales, leases, rentals, rendering of services, furnishing of rooms, lodgings or accommodations and other taxable transactions which are made, furnished or rendered by retailers whose place of business is located within the taxing county. The tax imposed shall apply to the furnishing of rooms, lodging or other accommodations within the county which are rented to transients. For the purpose of this Article, the situs of a transaction is the location of the retailer's place of business."

Sec. 317. G.S. 105-468 reads as rewritten:

" § 105-468. *Scope of use tax.*

The use tax which may be imposed under this Article shall be at the rate of one percent (1%) of the cost price of each item or article of

tangible personal property when it is not sold but used, consumed or stored for use or consumption in the taxing county, except that no tax shall be imposed upon tangible personal property when the property would be taxed by the State at a rate of other than three percent (3%) other than the general rate of tax set in G.S. 105-164.4 if it were taxable under G.S. 105-164.6.

Every retailer engaged in business in this State and in the taxing county and required to collect the use tax levied by G.S. 105-164.6 shall also collect the one percent (1%) use tax when such property is to be used, consumed or stored in the taxing county, one percent (1%) use tax to be collected concurrently with the State's use tax; but no retailer not required to collect the use tax levied by G.S. 105-164.6 shall be required to collect the one percent (1%) use tax. The use tax contemplated by this section shall be levied against the purchaser, and the purchaser's liability for the use tax shall be extinguished only upon payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the Secretary of Revenue, or to the taxing county, as appropriate, where the retailer is not required to collect the tax.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser, either in another taxing county within the State, or in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this Article, the tax paid may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Secretary of Revenue or to the taxing county, as appropriate, an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing county. The Secretary of Revenue or the taxing county, as appropriate, may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary. The use tax levied under this Article is not subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this Article."

Sec. 318. G.S. 105-470, 105-485, and 105-500 and Article 41 of Chapter 105 of the General Statutes are repealed.

Sec. 319. Chapter 1096 of the 1967 Session Laws is amended as follows:

- (1) The title is amended by deleting the phrase "THREE PER CENT SALES AND USE TAX." and substituting the phrase "SALES AND USE TAX AT THE GENERAL STATE RATE OF TAX SET IN G.S. 105-164.4."
- (2) Section 4 is amended by deleting the phrase "three per cent (3%)" each time it appears and substituting the phrase "general rate of".
- (3) Section 5 is amended by deleting the phrase "of other than three percent (3%)" and substituting the phrase "other than the general rate of tax set in G.S. 105-164.4".
- (4) Section 7 is repealed.
- (5) Section 10.1(d) is amended by deleting the phrase "Items on Which the State Now Imposes a Three Percent (3%) Sales Tax." and substituting the phrase "Scope."

Sec. 320. (a) Approval under the Local Government Sales and Use Tax Act, Article 39 of Chapter 105 of the General Statutes, or under the Mecklenburg County Sales and Use Tax Act, Chapter 1096 of the 1967 Session Laws, as amended, of one percent (1%) local sales and use taxes in addition to the three percent (3%) State sales and use taxes constitutes approval of one percent (1%) local sales and use taxes in addition to the four percent (4%) State sales and use taxes.

(b) Approval under the Supplemental Local Government Sales and Use Tax Act, Article 40 of Chapter 105 of the General Statutes, of one-half percent (1/2%) local sales and use taxes in addition to the one percent (1%) local sales and use taxes and three percent (3%) State sales and use taxes constitutes approval of one-half percent (1/2%) local sales and use taxes in addition to the one percent (1%) local sales and use taxes and the four percent (4%) State sales and use taxes.

(c) Approval under the Additional Supplemental Local Government Sales and Use Tax Act, Article 42 of Chapter 105 of the General Statutes, of one-half percent (1/2%) local sales and use taxes in addition to the one and one-half percent (1-1/2%) local sales and use taxes and three percent (3%) State sales and use taxes constitutes approval of one-half percent (1/2%) local sales and use taxes in addition to the one and one-half percent (1-1/2%) local sales and use taxes and the four percent (4%) State sales and use taxes.

Sec. 321. The provisions of this Part increasing the State sales and use tax from three percent (3%) to four percent (4%) do not apply to construction materials purchased to fulfill a lump sum or unit price contract entered into or awarded before the effective date of the increase or entered into or awarded pursuant to a bid made before the effective date of the increase when the construction materials would

otherwise be subject to the State sales and use tax at the rate of four percent (4%).

PART 55.-----HIGHWAY TAX CHANGES

Sec. 322. Division VIII of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

" § 105-164.44D. Reimbursement for sales tax exemption for purchases by the Department of Transportation.

The amount of sales and use tax revenue that is not realized by the General Fund as the result of the sales and use tax exemption in G.S. 105-164.13 for purchases by the Department of Transportation shall be transferred from the Highway Fund to the General Fund in accordance with this section. This direct transfer is made in lieu of eliminating the Department of Transportation's sales and use tax exemption to alleviate the administrative and accounting burden that would be placed on the Department of Transportation by eliminating the exemption.

For the 1991-92 fiscal year, the State Treasurer shall transfer the sum of eight million seven hundred thousand dollars (\$8,700,000) from the Highway Fund to the General Fund. The transfer shall be made on a quarterly basis by transferring one-fourth of the annual amount each quarter.

For each fiscal year following the 1991-92 fiscal year, the State Treasurer shall transfer the sum transferred the previous fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use taxes increased or decreased during the previous fiscal year. In each fiscal year, the transfer shall be made on a quarterly basis by transferring one-fourth of the annual amount each quarter."

Sec. 323. G.S. 105-187.6, as amended by Section 4 of Chapter 193 of the 1991 Session Laws, reads as rewritten:

" § 105-187.6. Exemptions from highway use tax.

(a) Full Exemptions. -- The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

- (1) To the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle.
- (2) To either a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of ~~resale other than lease or rental~~, resale.
- (3) To the same owner to reflect a change or correction in the owner's name.
- (4) By will or intestacy.

(5) By a conveyance between a husband and wife or a parent and child.

(6) By a distribution of marital property as a result of a divorce.

(b) Partial Exemptions. -- Only the minimum tax imposed by this Article applies when a certificate of title is issued as the result of a transfer of a motor vehicle:

~~(1) By a gift between a husband and wife or a parent and child.~~

~~(2) By will or intestacy.~~

~~(3) By a distribution of marital property as a result of a divorce.~~

~~(4)~~(1) To a secured party who has a perfected security interest in the motor vehicle.

~~(5)~~(2) To a partnership or corporation as an incident to the formation of the partnership or corporation and no gain or loss arises on the transfer under section 351 or section 721 of the Internal Revenue Code, or to a corporation by merger or consolidation in accordance with G.S. 55-11-06.

~~(6) To the same owner to reflect a change in the owner's name.~~

(c) Out-of-state Vehicles. -- A maximum tax of one hundred fifty dollars ~~(\$100.00)~~ (\$150.00) applies when a certificate of title is issued for a motor vehicle that, at the time of applying for a certificate of title, is and has been titled in another state for at least 90 days."

Sec. 324. G.S. 20-85.1(c) reads as rewritten:

"(c) All funds collected under this section shall be deposited in the Highway Fund. The fee collected under subsection (a) shall be credited to the Highway Fund. The fee collected under subsection (b) shall be credited to the Highway Trust Fund."

Sec. 325. G.S. 20-7(l) reads as rewritten:

"(l) Any person who except for lack of instruction in operating a motor vehicle would be qualified to obtain an operator's a drivers license under this Article may apply for obtain a temporary learner's permit, permit. A learner's permit authorizes and the Division shall issue such permit, entitling the applicant, while having such permit in his immediate possession, permit holder to drive a specified type or class of motor vehicle upon the highways for a period of 18 months, while in possession of the permit. A learner's permit is valid for a period of 18 months after it is issued. The fee for issuance of a temporary learner's permit shall be five dollars (\$5.00), is ten dollars (\$10.00). Any such A learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permittee permit holder must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the class or type of motor vehicle being operated driven and who is seated in the seat beside the permittee, permit holder."

~~The fee for the issuance of a renewal or a second temporary learner's permit shall be five dollars (\$5.00)."~~

Sec. 326. G.S. 20-11(b) reads as rewritten:

"(b) The Division may ~~grant an application for issue~~ a limited learner's permit ~~of any to a minor under the age of 16, who is at least 15 years old but is less than 16 years old and who otherwise meets the requirements of licensing under this section, when such section.~~ An application is for a limited learner's permit must be signed by both the applicant and ~~his or her~~ the applicant's parent or guardian or some other responsible adult with whom the applicant resides and who is approved by the ~~Division of Motor Vehicles, Division.~~ The A limited learner's permit ~~shall entitle the applicant, while having the permit in his immediate possession,~~ authorizes the permit holder to drive a specified type or class of motor vehicle ~~of the specified type or class upon the highways while in possession of the permit and accompanied by a parent, guardian, or other person approved by the Division, Division who is licensed under this Chapter to operate a motor vehicle (of the type or class being operated by the permittee) and who is actually occupying a seat to operate the motor vehicle being driven and is seated beside the driver.~~ The permit holder. A limited learner's permit ~~shall be~~ is valid for a period of 18 months ~~and the months.~~ The fee for ~~issuance of a limited learner's permit shall be five dollars (\$5.00),~~ is ten dollars (\$10.00). ~~Provided, however, a limited learner's permit as herein provided shall be issued only to those applicants who have reached the age of 15 years.~~ In the event a minor who ~~has been issued~~ holds a limited learner's permit ~~under this subsection operates~~ drives a motor vehicle in violation of ~~any provision herein, law,~~ the permit shall be canceled.

~~Provided a~~ A driver who holds a limited learner's permit only shall not be deemed a male operator under age 25 for the purpose of determining the insurance premium rate for persons insured under automobile property damage and bodily injury liability insurance policies."

Sec. 327. G.S. 20-14 reads as rewritten:

"§ 20-14. Duplicate licenses.

A licensee may obtain a duplicate license, ~~upon payment of a fee of five dollars (\$5.00), if he furnishes to~~ license by paying a fee of ten dollars (\$10.00) and giving the Division satisfactory proof ~~that; that~~ any of the following has occurred:

- (1) ~~He~~ The license has been lost or ~~destroyed his license; or destroyed.~~
- (2) It is necessary to change the name or address on the ~~license; or~~ license.

- (3) ~~He has reached the age wherein he~~ Because of the licensee's age, the licensee is entitled to a license with a different color photographic background."

Sec. 328. G.S. 20-37.7(d) reads as rewritten:

"(d) A special identification card issued under this section shall expire on the birth date of the holder in the fourth year of issuance. The fee for the issuance or reissuance of a special identification card ~~shall be five dollars (\$5.00) which shall be placed in the Highway Fund; provided that a~~ is the same as the fee set in G.S. 20-14 for issuing a duplicate license. A special identification card may be issued without fee to a resident of North Carolina who is legally blind or has attained the age of 70 years; provided further that the 70. The fees collected for the issuance of special identification cards to persons under the age of 16 shall be placed in a reserve fund to cover the cost of the operation of the program required by this Article."

Sec. 329. G.S. 20-37.9 reads as rewritten:

"§ 20-37.9. *Notification of change of address.*

Whenever the holder of a special identification card issued under ~~the provisions of~~ G.S. 20-37.7 has a change in the address as shown on ~~such~~ the special identification card, he or she shall apply for reissuance of a special identification card within 60 days after the address has been changed. The fee for reissuance of ~~the a~~ special identification card ~~shall be five dollars (\$5.00), is the same as the fee set in G.S. 20-37.7 for issuing a special identification card. Provided that in those instances in which the~~ If a change of address is through the result of governmental action and there is no actual change of geographical location, no change of address on the holder of the card shall be required until the expiration thereof or reissuance is applied for by the holder thereof, is not required to change the address on the card until the Division issues the holder another card."

Sec. 330. G.S. 20-26(c) reads as rewritten:

"(c) The Division shall furnish copies of license records required to be kept by subsection (a) of this section to other ~~persons, firms and corporations~~ persons for uses other than official upon prepayment of ~~the fee therefor, according to the following schedule;~~ following fees:

- | | | |
|--|--------|--------|
| (1) Limited extract copy of license record. | | |
| for period up to three years | \$4.00 | \$5.00 |
| (2) Complete extract copy of license record | 4.00 | 5.00 |
| (3) Certified true copy of complete license record | | 7.00. |

All fees received by the Division under ~~the provisions of this subsection shall be paid into and become a part of the 'Highway Fund,'~~ credited to the Highway Fund."

Sec. 331. G.S. 20-42(b) reads as rewritten:

~~"(b) The Commissioner and such officers of the Division as he may designate are hereby authorized to designated by the Commissioner may prepare under the seal of the Division and deliver upon request a certified copy of any record document of the Division, charging a fee of four dollars (\$4.00) five dollars (\$5.00) for each document so certified, and every such certified. A certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. Provided that any copy of any record of the Division The certification fee does not apply to a document furnished to State, State officials or to county, municipal and municipal, or court officials of this State for official use shall be furnished without charge, use."~~

Sec. 332. G.S. 20-73 reads as rewritten:

~~" § 20-73. New owner to secure must get new certificate of title.~~

~~The transferee, within 20 days after the purchase of any vehicle, shall present the certificate of title endorsed and assigned as hereinbefore provided, to the Division and make application for a new certificate of title for such vehicle except as otherwise permitted in G.S. 20-75 and 20-76. Any transferee willfully failing or refusing to make application for title shall be guilty of a misdemeanor.~~

~~(a) Time Limit. -- A person to whom a vehicle is transferred, whether by purchase or otherwise, must apply to the Division for a new certificate of title. An application for a certificate of title must be submitted within 28 days after the vehicle is transferred.~~

~~A person may apply directly for a certificate of title or may allow another person, such as the person from whom the vehicle is transferred or a person who has a lien on the vehicle, to apply for a certificate of title on that person's behalf. A person to whom a vehicle is transferred is responsible for getting a certificate of title within the time limit regardless of whether the person allowed another to apply for a certificate of title on the person's behalf.~~

~~(b) Exceptions. -- This section does not apply to a dealer or an insurance company to whom a vehicle is transferred when the transfer meets the requirements of G.S. 20-75. A person who must follow the procedure in G.S. 20-76 to get a certificate of title and who applies for a title within the required 20-day time limit is considered to have complied with this section even when the Division issues a certificate of title to the person after the time limit has elapsed.~~

~~(c) Penalties. -- A person to whom a vehicle is transferred who fails to apply for a certificate of title within the required time is subject to a civil penalty of ten dollars (\$10.00) and is guilty of a misdemeanor. A person who undertakes to apply for a certificate of title on behalf of another person and who fails to apply for a title within the required time is subject to a civil penalty of ten dollars (\$10.00). When a~~

person to whom a vehicle is transferred fails to obtain a title within the required time because a person who undertook to apply for the certificate of title did not do so within the required time, the Division may impose a civil penalty only on the person who undertook to apply for the title. Civil penalties collected under this subsection shall be credited to the Highway Fund."

Sec. 333. G.S. 20-74 reads as rewritten:

" § 20-74. Penalty for failure to make application for transfer within the time specified by law, making false statement about transfer of vehicle.

It is the intent and purpose of this Article that every new owner or purchaser of a vehicle previously registered shall make application for transfer of title within 20 days after acquiring same, or see that such application is sent in by the lienholder with proper fees, and responsibility for such transfer shall rest on the purchaser. Any person, firm or corporation failing to do so shall pay a penalty of four dollars (\$4.00) in addition to the fees otherwise provided in this Article. It is further provided that any dealer or owner who shall knowingly make any A dealer or another person who, in an application required by this Division, knowingly makes a false statement in any application required by this Division as to about the date a vehicle was sold or acquired shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than 30 days. All moneys collected under this section shall go to the State Highway Fund."

Sec. 334. G.S. 20-119(b) reads as rewritten:

"(b) Upon the issuance of a special permit for an oversize or overweight vehicle by the Department of Transportation in accordance with this section, the applicant shall pay to the Department a fee of five dollars (\$5.00) ten dollars (\$10.00) for a single trip permit or twenty-five dollars (\$25.00) and fifty dollars (\$50.00) for an annual permit issued for a single vehicle. Any person, firm or corporation person who operates more than one vehicle may apply for, and the Department may issue, obtain an annual permit for all oversize or overweight vehicles operated by said person, firm or corporation, and said applicant shall pay to the Department the person upon payment of an annual fee based on the following schedule:

<u>No. of Vehicles</u>	<u>Annual Permit Rate per Vehicle</u>	
First 50	<u>\$25.00</u>	<u>\$50.00</u>
51 to 100	<u>20.00</u>	<u>40.00</u>
101 to 150	<u>15.00</u>	<u>30.00</u>
Over 150	<u>10.00</u>	<u>20.00</u>

Any vehicle required to obtain an overweight permit shall not be charged an additional fee for oversize. Any vehicle required to obtain

an oversize permit shall not be charged an additional fee for overweight. This subsection shall not apply to farm equipment or machinery being used at the time for agricultural purposes, nor to the moving of a house as provided for by the license and permit requirements of Article 16 of this Chapter. Fees will not be assessed for permits for oversize and overweight vehicles issued to any agency of the United States Government or the State of North Carolina, its agencies, institutions, ~~subdivisions~~ subdivisions, or ~~municipalities~~ municipalities, provided municipalities if the vehicle is registered in the name of such governmental body, the agency."

Sec. 335. G.S. 20-289(a), as amended by House Bill 904, 1991 Session, AN ACT TO REGULATE THE SALE OF MOTOR VEHICLES BY MOTOR VEHICLE DEALERS, reads as rewritten:

"(a) The license fee for each fiscal year, or part thereof, shall be as follows:

- (1) For motor vehicle dealers, distributors, distributor branches, and wholesalers, ~~thirty dollars (\$30.00)~~ fifty dollars (\$50.00) for each place of business.
- (2) For manufacturers, ~~seventy-five dollars (\$75.00)~~, one hundred dollars (\$100.00), and for each factory branch in this State, ~~forty-five dollars (\$45.00)~~, seventy dollars (\$70.00).
- (3) For motor vehicle sales representatives, ~~five dollars (\$5.00)~~, ten dollars (\$10.00).
- (4) For factory representatives, or distributor representatives, ~~six dollars (\$6.00)~~, ten dollars (\$10.00).
- (5) Repealed."

Sec. 336. G.S. 20-291, as amended by House Bill 904, 1991 Session, AN ACT TO REGULATE THE SALE OF MOTOR VEHICLES BY MOTOR VEHICLE DEALERS, reads as rewritten:

"§ 20-291. *Representatives to carry license and display it on request: license to name employer.*

Every person to whom a sales representative, factory representative, or distributor representative license is issued shall carry the license when engaged in business, and shall display it upon request. The license shall state the name of the representative's employer. If the representative changes employers, the representative shall immediately ~~mail the license to the Division, which shall endorse the change on the license without charge.~~ apply to the Division for a license that states the name of the representative's new employer. The fee for issuing a license stating the name of a new employer is one-half the fee set in G.S. 20-289 for an annual license."

Sec. 337. Notwithstanding G.S. 20-291, as amended by this act, for the period October 1, 1991, through June 30, 1992, the fee

for issuing a license to a sales representative, a factory representative, or a distributor representative who has a license, has changed employers, and is therefore required to apply for a new license is five dollars (\$5.00). This section becomes effective October 1, 1991.

PART 56.-----CONVEYANCE TAX CHANGES

Sec. 338. G.S. 105-228.30 reads as rewritten:

" § 105-228.30. *Imposition of excise stamp tax.*

(a) There is ~~hereby~~ levied an excise tax on each deed, instrument, or writing by which any ~~lands, tenements or other realty~~ interest in real property is conveyed to another person, ~~granted, assigned or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons.~~ The tax ~~imposed hereby~~ shall be at the rate of ~~fifty cents (50c)~~ one dollar (\$1.00) on each five hundred dollars (\$500.00) or fractional part thereof of the consideration or value of the interest or property conveyed ~~(exclusive of the value of any lien or encumbrance remaining thereon at the time of sale).~~ conveyed. The tax ~~hereby imposed and levied~~ shall be paid by the transferor ~~or transferors~~ to the register of deeds of the county ~~wherein~~ in which the real estate is situated prior to recording the instrument of conveyance; provided that, if the instrument transfers any parcel of real estate lying in two or more counties, the tax shall be paid to the county wherein the greater part of the real estate with respect to value lies. ~~Except as otherwise hereinafter provided, the proceeds of the tax herein levied shall be retained by the county and placed in its general funds.~~

(b) The register of deeds of each county shall remit the net proceeds of the tax levied by this section to the county finance officer on a monthly basis. The finance officer of each county shall distribute the tax proceeds on a monthly basis as follows: one-half of the net proceeds shall be retained by the county and placed in its general fund and one-half of the net proceeds shall be remitted to the Department of Revenue. Of the funds remitted to it pursuant to this section, the Department of Revenue shall credit fifteen percent (15%) to the Recreation and Natural Heritage Trust Fund established under G.S. 113-77.7 and the remainder to the General Fund. As used in this subsection, the term 'net proceeds' means gross proceeds less the cost to the county of collecting and administering the tax."

Sec. 339. G.S. 113-77.9 reads as rewritten:

" § 113-77.9. *Acquisition of lands from the Recreation and Natural Heritage Trust Fund.*

(a) From time to time, but at least once each year, the Secretary, the Chairman of the North Carolina Wildlife Resources Commission,

and the Commissioner of Agriculture shall propose to the Trustees lands to be acquired from the Fund. For each tract or interest proposed, the Secretary, the Chairman of the North Carolina Wildlife Resources Commission, and the Commissioner of Agriculture shall provide the Trustees with the following information:

- (1) The value of the land for recreation, forestry, fish and wildlife habitat, and wilderness purposes, and its consistency with the plan developed pursuant to the State Parks Act, the State's comprehensive plan for outdoor recreation, parks, natural areas development, and wildlife management goals and objectives;
 - (2) Any rare or endangered species on or near the land;
 - (3) Whether the land contains a relatively undisturbed and outstanding example of a native North Carolina ecological community that is now uncommon;
 - (4) Whether the land contains a major river or tributary, watershed, wetland, significant littoral, estuarine, or aquatic site, or important geologic feature;
 - (5) The extent to which the land represents a type of landscape, natural feature, or natural area that is not currently in the State's inventory of parks and natural areas;
 - (6) Other sources of funds that may be available to assist in acquiring the land;
 - (7) The State department or division that will be responsible for managing the land; ~~and~~
 - (8) What assurances exist that the land will not be used for purposes other than those for which it is being ~~acquired~~, ~~acquired~~; and
 - (9) Whether the site or structure is of such historical significance as to be essential to the development of a balanced State program of historic properties.
- (b) The Trustees may authorize expenditures from the Fund to acquire land; acquire:
- (1) ~~That Land~~ that represents the ecological diversity of North Carolina, including natural features such as riverine, montane, coastal, and geologic systems and other natural areas to ensure their preservation and conservation for recreational, scientific, educational, cultural, and aesthetic ~~purposes; and purposes.~~
 - (2) ~~As Land as~~ additions to the system of parks, State trails, aesthetic forests, fish and wildlife management areas, wild and scenic rivers, and natural areas for the beneficial use and enjoyment of the ~~public~~, public.

- (3) Subject to the limitations of subsection (b1), land that contributes to the development of a balanced State program of historic properties.

The Trustees may designate managers or managing agencies of the lands so acquired to receive grants from the Fund's stewardship account. In authorizing expenditures from the Fund to acquire land pursuant to this Article, the Trustees shall be guided by any priorities established by the Secretary, the Chairman of the Wildlife Resources Commission, and the Commissioner of Agriculture in their proposals made pursuant to subsection (a), above.

(b1) The Trustees may authorize expenditure of up to twenty-five percent (25%) of the funds credited to the Fund pursuant to G.S. 105-228.30 during the preceding fiscal year to acquire land under subdivision (3) of subsection (b). No other funds in the Fund may be used for expenditures to acquire land under subdivision (3) of subsection (b).

(c) The Trustees may authorize expenditures from the Fund to pay for the inventory of natural areas by the Secretary's Natural Heritage Program conducted pursuant to Chapter 113A, Article 9A, of the General Statutes.

(d) The Department of Administration may, pursuant to G.S. 143-341, acquire by purchase, gift, or devise all lands selected by the Trustees for acquisition pursuant to this Article. Title to any land acquired pursuant to this Article shall be vested in the State. State agencies with management responsibilities for lands acquired pursuant to this Article may enter into management agreements in the form of leases with counties, cities, and towns to aid in managing the lands, and such lease agreements shall be executed by the Department of Administration pursuant to G.S. 143-341.

(e) The Secretary shall maintain and annually revise a list of acquisitions made pursuant to this Article. The list shall include the acreage of each tract, the county in which the tract is located, the amount paid from the Fund to acquire the tract, and the State department or division responsible for managing the tract. The Secretary shall furnish a copy of the list to each Trustee and to each House of the General Assembly after each revision.

(f) No provision of this Article shall be construed to eliminate hunting and fishing, as regulated by the laws of the State of North Carolina, upon properties purchased pursuant to this Article."

TITLE V. - BUDGET REFORM

PART 57.-----BUDGET REFORM

-----LONG-TERM FISCAL NOTES

Sec. 340. Article 7A of Chapter 120 of the General Statutes is amended by adding a new section to read:

" § 120-36.7. Long-term fiscal notes.

(a) Budget Outlook; Proposed Legislation. -- Every fiscal analysis of the State budget outlook shall encompass the upcoming five-year period. Every fiscal analysis of the impact of proposed legislation on the State budget shall estimate the impact for the first five fiscal years the legislation would be in effect.

(b) Proposed State Buildings. -- Upon the request of a member of the General Assembly, the Fiscal Research Division shall prepare a fiscal analysis of proposed legislation to appropriate funds for a State building. The analysis shall estimate the projected maintenance and operating costs of the building for the first 20 fiscal years after it is completed.

(c) Proposed New Programs. -- Upon the request of a member of the General Assembly, the Fiscal Research Division shall prepare a fiscal analysis of proposed legislation to create a new State program. The analysis shall identify and estimate all personnel costs of the proposed new program for the first five fiscal years it will operate.

(d) Proposed Increases in Incarceration. -- Every bill and resolution introduced in the General Assembly proposing any change in the law that could cause a net increase in the length of time for which persons are incarcerated or the number of persons incarcerated, whether by increasing penalties for violating existing laws, by criminalizing behavior, or by any other means, shall have attached to it at the time of its consideration by the General Assembly a fiscal note prepared by the Fiscal Research Division. The fiscal note shall be prepared in consultation with the Sentencing Policy and Advisory Commission and shall identify and estimate, for the first five fiscal years the proposed change would be in effect, all costs of the proposed net increase in incarceration, including capital outlay costs if the legislation would require increased cell space. If, after careful investigation, the Fiscal Research Division determines that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given. No comment or opinion shall be included in the fiscal note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

The sponsor of each bill or resolution to which this subsection applies shall present a copy of the bill or resolution with the request for a fiscal note to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall prepare the fiscal note as promptly as possible. The Fiscal Research Division shall prepare the fiscal note and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

This fiscal note shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a fiscal note. A fiscal note attached to a bill or resolution pursuant to this subsection is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment that proposes a change in the law that could cause a net increase in the length of time for which persons are incarcerated or the number of persons incarcerated, whether by increasing penalties for violating existing laws, by criminalizing behavior, or by any other means, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a fiscal note as provided in this section."

Sec. 341. G.S. 143-3.5 reads as rewritten:

" § 143-3.5. Coordination of statistics.

It shall be the duty of the Director through the Office of State Budget and Management to coordinate the efforts of governmental agencies in the collection, development, dissemination and analysis of official economic, demographic and social statistics pertinent to State budgeting. The ~~Division~~ Office shall

- (1) Prepare ~~and/or~~ and release the official demographic and economic estimates ~~and/or~~ and projections for the State;
- (2) Conduct special economic and demographic analyses and studies to support statewide budgeting;
- (3) Develop and coordinate cooperative arrangements with federal, State and local governmental agencies to facilitate the exchange of data to support State budgeting;
- (4) Compile, maintain, and disseminate information about State programs which involve the distribution of State aid funds to local governments including those variables used in their allocation; and,
- (5) Develop and maintain in cooperation with other State and local governmental agencies, an information system

providing comparative data on resources and expenditures of local governments.

Every fiscal analysis prepared by the Director or the Office of State Budget and Management addressing the State budget outlook shall encompass the upcoming five-year period. Every fiscal analysis prepared by the Director or the Office of State Budget and Management addressing the impact of proposed legislation on the State budget shall estimate the impact for the first five fiscal years the legislation would be in effect. To minimize duplication of effort in collecting or developing new statistical series pertinent to State planning and budgeting, including contractual arrangements, State agencies must submit to the Director of the Budget proposed procedures and funding requirements.

This section shall not apply to the General Assembly, any of its committees and subcommittees, the Legislative Research Commission, the Legislative Services Commission, or any other committee or commission in the legislative branch."

-----CLARIFY STATE COST OF LOCAL PROGRAMS

Sec. 342. G.S. 143-10.1 is repealed.

-----LIMIT NUMBER OF STATE EMPLOYEES

Sec. 343. G.S. 143-10.2 reads as rewritten:

" § 143-10.2. *Limit on number of State employees.*

The total number of permanent ~~State-funded~~ State-funded employees, excluding employees in the State's public school system funded by way of State aid to local public school units, shall not be increased by the end of any State fiscal year by a greater percentage than the percentage rate of the residential population growth for the State of North Carolina. The percentage rates shall be computed by the Office of State Budget and Management. The population growth shall be computed by averaging the rate of residential population growth in each of the preceding 10 fiscal years as stated in the annual estimates of residential population in North Carolina made by the United States Census Bureau. The growth rate of the number of employees shall be computed by averaging the rate of growth of State employees in each of the preceding 10 fiscal years as of July 1 of each fiscal year as stated in the State Budget."

Sec. 344. The limitation on the number of State employees contained in G.S. 143-10.2 does not apply to the Department of Transportation with respect to additional employees in administrative positions and to the Division of Highways with respect to operational and field positions when those administrative, operational, and field positions are needed to plan, design, and construct the specific projects funded by the North Carolina Highway Trust Fund. The Department shall report the number of employees hired and the

number of those hired, if any, that exceeds the limitation in G.S. 143-10.2 to the Joint Legislative Highway Oversight Committee and the Joint Legislative Commission on Governmental Operations.

-----MAINTENANCE RESERVE RECOMMENDATIONS

Sec. 345. The Office of State Budget and Management shall report to the 1993 General Assembly, on or before February 15, 1993, its recommendations on how to create a maintenance reserve to assure the continued availability of funds for repair, renovation, and maintenance of State buildings.

-----LIMITATIONS ON BUDGET

Sec. 346. The Executive Budget Act, Article 1 of Chapter 143 of the General Statutes, is amended by adding the following new sections to read:

" § 143-15.1. Current Operations Appropriations Act.

The General Assembly shall enact the Current Operations Appropriations Act by June 15 of odd-numbered years and by June 30 of even-numbered years in which a Current Operations Appropriations Act is enacted. The Current Operations Appropriations Act shall state the amount of General Fund appropriations availability upon which the General Fund budget is based. The statement of availability shall list separately the beginning General Fund credit balance, General Fund revenues, and any other components of the availability amount.

The General Fund operating budget appropriations, including appropriations for local tax reimbursements and local tax sharing, for the second year in a Current Operations Appropriations Act that contains a biennial budget shall not be more than two percent (2%) greater than the General Fund operating budget appropriations for the first year of the biennial budget.

" § 143-15.2. Appropriation of General Fund credit balance.

The General Assembly shall appropriate up to one-fourth of any anticipated credit balance remaining in the General Fund at the end of each fiscal year to the Savings Reserve Account as provided in G.S.

143-15.3. The General Assembly may appropriate that part of the anticipated credit balance not appropriated to the Savings Reserve Account only for capital improvements or other one-time expenditures.

" § 143-15.3. Savings Reserve Account.

(a) There is established a Savings Reserve Account as a special revenue fund in the State treasury. The General Assembly shall appropriate to the Savings Reserve Account one-fourth of any anticipated credit balance remaining in the General Fund at the end of each fiscal year until the account contains funds equal to five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax reimbursements and local government tax-sharing funds. If the

balance in the Savings Reserve Account falls below this level during a fiscal year, the General Assembly shall appropriate to the Savings Reserve Account for the following fiscal years up to one-fourth of any anticipated credit balance remaining in the General Fund at the end of each fiscal year until the account again equals five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax reimbursements and local government tax-sharing funds.

(b) The Director may not use funds in the Savings Reserve Account unless the use has been approved by an act of the General Assembly.

" § 143-15.4. General Fund operating budget size limited.

(a) Size Limitation. Except as otherwise provided in this section, the General Fund operating budget each fiscal year shall not be greater than seven percent (7%) of the projected total State personal income for that fiscal year. For the purpose of this section, the General Fund operating budget includes any appropriations for local tax reimbursements and local tax-sharing, but does not include appropriations for (i) capital expenditures or (ii) one-time expenditures due to natural disasters, federal mandates, or other emergencies.

(b) Increase in Size Limitation. To the extent that any percent increase in appropriations for a fiscal year for (i) Medicaid, (ii) operation of prisons, or (iii) the costs of providing health insurance for teachers and State employees, exceeds the percent increase in State personal income growth for the same period, the limitation on the size of the General Fund operating budget provided in subsection (a) of this section for that fiscal year shall be increased by the dollar amount represented by the excess percentage. For all subsequent fiscal years, the percent limitation contained in subsection (a) shall then be increased to reflect that dollar adjustment.

(c) Fiscal Reports. The Office of State Budget and Management and the Fiscal Research Division of the General Assembly shall each submit a tentative estimate of total State personal income for the upcoming fiscal year to the General Assembly no later than February 1 of each year. The Office and the Fiscal Research Division shall each submit a final projection of total State personal income for the upcoming fiscal year to the General Assembly no later than May 1 of each year. The General Assembly shall use the lower of the two final projections to calculate the limitation on the size of the General Fund operating budget provided in this section."

-----STATE GOVERNMENT PERFORMANCE AUDIT

Sec. 347. (a) The Legislative Services Commission shall contract for a performance audit of the executive branch of State government and a performance audit of the staff of the legislative

branch of State government. The Legislative Services Commission shall report the results of these audits to the 1993 General Assembly on or before February 1, 1993.

The performance audit in the executive branch shall include an examination of the efficiency and effectiveness of major management policies, practices, and functions across all executive branch agencies, including the following areas:

- (1) Planning, budgeting, and program evaluation policies and practices.
- (2) Personnel systems operations and management.
- (3) State purchasing operations and management.
- (4) Information processing and telecommunications systems policy, organization, and management.
- (5) Organizational and staffing patterns, especially in terms of the ratio of managers and supervisors to nonmanagement personnel.

Performance audits in executive branch agencies may examine entire departments, agencies, or institutions, or similar programs in several departments.

(b) There is appropriated from the General Fund to the General Assembly the sum of three million dollars (\$3,000,000) for the 1991-92 fiscal year to contract for the performance audits required by this section. These funds shall not revert at the end of the 1991-92 fiscal year but shall remain available for expenditure in the 1992-93 fiscal year for the performance audits required by this section. The funds appropriated from the General Fund in this subsection are from the proceeds of the North Carolina Corporation Income Tax.

-----BUDGET REFORM STUDY

Sec. 348. Joint Select Fiscal Trends and Reform Commission.

(a) There is created in the General Assembly the Joint Select Fiscal Trends and Reform Commission. The Commission shall review the long-term fiscal trends identified by the Economic Future Study Commission and to analyze the impact of these and other trends on the State budget during the 1990s. The Commission shall also continue the work of the House Special Select Subcommittee on Fiscal Reform, begun during the 1991 Session of the General Assembly, to identify the factors that have contributed to the financial problems the State has faced during the past two years and recommend measures to avoid a recurrence of those problems to the extent they are within the control of the State of North Carolina. The Commission's work shall include:

- (1) Monitoring the implementation of the State budget reform measures adopted in this act.

- (2) Analyzing options to address the effect on the State budget of federal legislative and judicial mandates.
 - (3) Reviewing the condition of programs directed at ensuring an adequate work force for the 1990s.
 - (4) Analyzing options to address future General Fund budget shortfalls.
 - (5) Studying the feasibility of modifying the State's accounting practices to improve the State's balance sheet by treating as accrued (i) sales tax proceeds that have been collected on behalf of the State by merchants but have not yet been remitted and (ii) other tax proceeds that have been collected on behalf of the State but have not yet been remitted.
 - (6) Reviewing the fiscal relationship between the State and its local governments by examining State and local government revenue sources and the allocation of responsibility among the State and its local governments for financing and performing government services. In its work pursuant to this subdivision, the Commission shall examine:
 - a. Whether local government tax sharing and local government tax reimbursements should be financed by appropriation or by earmarking.
 - b. Whether the State should provide local governments with additional revenue options.
 - c. Whether a more adequate and dependable means of financing State and local government services should be devised.
 - d. Whether State and local responsibilities for providing government services should be reallocated.
 - e. How the fiscal relationship between the State and local governments, particularly the lack of uniform tax rates that results from local option taxes, affects economic development.
 - f. The effectiveness of the Local Government Fiscal Information Act, Article 6D of Chapter 120 of the General Statutes.
 - g. How the timing of the State's budget process affects the ability of local governments to comply with the deadlines imposed in the Local Government Budget and Fiscal Control Act.
- (b) The Commission shall consist of 22 members to be appointed as follows:
- (1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, one of whom shall be designated cochair.

- (2) Three public members appointed by the President Pro Tempore of the Senate.
- (3) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, one of whom shall be designated cochair.
- (4) Three public members appointed by the Speaker of the House of Representatives.

In making the appointments, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall attempt to select members who are representative of all North Carolinians, including representatives of business and industry, professionals, local governments, major political parties, educators, ethnic groups, environmental advocates, low-income citizens, and consumers.

(c) The Commission may submit an interim report of its findings and recommendations to the 1992 Regular Session of the General Assembly by filing a report with the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. The Commission shall submit a final report of its findings and recommendations to the 1993 General Assembly on or before February 1, 1993, by filing a report with the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate. The Commission shall terminate upon filing its final report.

(d) Members appointed to the Commission shall serve until the Commission makes its final report. Vacancies on the Commission shall be filled by the same appointing officer who made the original appointments.

(e) The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of House and Senate supervisors of clerks. The expenses of employment of the clerical staff shall be borne by the Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Commission, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4.

(f) Members of the Commission shall receive per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are also General Assembly members, at the rate established in G.S. 120-3.1.

- (2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6.
- (3) All other Commission members, at the rate established in G.S. 138-5.

TITLE VI. - OTHER

PART 58.-----MISCELLANEOUS APPROPRIATIONS
PROVISIONS

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----APPLICATION OF TITLE

Sec. 348.1. The sections under this Part apply to Titles I, II, and III of this act.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----EFFECT OF HEADINGS

Sec. 349. The headings to the Parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----EXECUTIVE BUDGET ACT REFERENCE

Sec. 350. The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----COMMITTEE REPORT

Sec. 351. The Joint Appropriations Committee House/Senate Base and Expansion Budget Report and the Joint Appropriations Committee House/Senate Base and Expansion Budget Conference Report dated July 11, 1991, which were distributed in the House and Senate and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in G.S. 143-15 of the Executive Budget Act, and for these purposes shall be considered a part of this act.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----MOST TEXT APPLIES ONLY TO 1991-93

Sec. 352. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1991-93 biennium, the textual provisions of Titles I, II, and III of this act shall apply only to funds appropriated for and activities occurring during the 1991-93 biennium.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----SEVERABILITY CLAUSE

Sec. 353. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Requested by: Representatives Nesbitt, Diamont, Senators Basnight, Plyler

-----EFFECTIVE DATE

Sec. 354. Except as otherwise provided, Titles I, II, and III of this act become effective July 1, 1991.

PART 59.-----MISCELLANEOUS REVENUE PROVISIONS

-----SAVINGS CLAUSE

Sec. 355. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

-----DEPARTMENT OF REVENUE FUNDS

Sec. 356. To pay for the additional costs of implementing the provisions of this act in a timely manner, the Department of Revenue shall retain the sum of seven hundred thousand dollars (\$700,000) from collections received by the Department during July 1991 under Article 5 of Chapter 105 of the General Statutes.

-----EFFECTIVE DATE

Sec. 357. Titles IV, V, and VI of this act are effective as follows:

- (1) Part 46 -- Internal Revenue Code Update. Part 46 of this act is effective for taxable years beginning on or after January 1, 1991.
- (2) Part 47 -- Corporate Income Tax Changes. The amendment to G.S. 115C-546.1 in Part 47 of this act becomes effective October 1, 1991, and applies to remittances made on or after that date. The remainder of Part 47 of this act is effective for taxable years beginning on or after January 1, 1991. G.S. 105-130.3A, as enacted by Part 47 of this act, expires for taxable years beginning on or after January 1, 1995.
- (3) Part 48 -- Cigarette Tax Changes. Part 48 of this act becomes effective August 1, 1991.
- (4) Part 49 -- Other Tobacco Tax Changes. Part 49 of this act becomes effective January 1, 1992.
- (5) Part 50 -- Soft Drink Tax Administrative Changes. Part 50 of this act becomes effective October 1, 1991.
- (6) Part 51 -- Insurance Tax Changes and Regulatory Charge. G.S. 143-151.21, as enacted by Part 51 of this act, and the amendments to G.S. 58-69-40, 58-70-45, and 58-71-180 in Part 51 of this act, become effective July 1, 1992. The repeal of G.S. 58-48-75, as provided in Part 51 of this act, becomes effective July 1, 1991. The remainder of Part 51 of this act is effective for taxable years beginning on or after January 1, 1991.
- (7) Part 52 -- Individual Income Tax Changes. Part 52 of this act is effective for taxable years beginning on or after January 1, 1991.
- (8) Part 53 -- Alcoholic Tax Changes. The amendment to G.S. 18B-804(b)(9) in Part 53 of this act becomes effective October 1, 1991, and applies to sales made on or after that date. The amendments to the remainder of G.S. 18B-804 and to G.S. 18B-805 in Part 53 of this act become effective August 1, 1991, and apply to sales made on or after that date. The amendments to G.S. 18B-1004 in Part 53 of this act become effective August 1, 1991. The remainder of Part 53 of this act becomes effective May 1, 1992, and applies to permits and licenses issued or renewed on or after that date.
- (9) Part 54 -- Sales Tax Changes. Part 54 of this act becomes effective July 16, 1991, and applies to sales made on or after that date.
- (10) Part 55 -- Highway Tax Changes. The amendment to G.S. 20-289(a) in Part 55 of this act becomes effective July 1,

1992. The amendment to G.S. 20-291 in Part 55 of this act becomes effective October 1, 1991. Except as otherwise provided in Part 55 of this act, the remainder of Part 55 of this act becomes effective August 1, 1991.

- (11) Part 56 -- Conveyance Tax Changes. Part 56 of this act becomes effective August 1, 1991, and applies to transfers made on or after that date.
- (12) Part 57 -- Budget Reform. G.S. 120-36.7, as enacted by Part 57 of this act, and the amendment to G.S. 143-3.5 in Part 57 of this act, are effective beginning with fiscal estimates addressing the 1992-93 fiscal year. G.S. 143-15.1, as enacted by Part 57 of this act, is effective beginning with the 1992-93 budget. G.S. 143-15.2 and G.S. 143-15.3, as enacted by Part 57 of this act, are effective beginning with the General Fund credit balance at the end of the 1992-93 fiscal year. G.S. 143-15.4, as enacted by Part 57 of this act, is effective beginning with the 1993-94 General Fund operating budget, and may be used as a guide in preparing the 1992-93 General Fund operating budget. Except as otherwise provided in Part 57 of this act, the remainder of Part 57 of this act is effective upon ratification.
- (13) Remainder of Titles IV, V, and VI. The remainder of Titles IV, V, and VI of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

S.B. 108

CHAPTER 690

AN ACT TO IMPROVE ADMINISTRATION OF THE SALES AND USE TAX BY INCREASING THE LICENSE TAXES, ALLOWING MORE SMALL RETAILERS TO FILE QUARTERLY SALES TAX RETURNS, AND EXTENDING THE LIMITATIONS PERIOD FOR ENFORCING LIABILITY AGAINST CERTAIN TRANSFEREES AND CORPORATE OFFICERS, AND TO MAKE TECHNICAL CORRECTIONS TO THE REVENUE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.4(c) reads as rewritten:

"(c) Any person who engages ~~or continues~~ in any business for which a privilege tax is imposed by this Article shall ~~immediately after July 1, 1979,~~ apply for and obtain from the Secretary upon payment

~~of the sum of five dollars (\$5.00) fifteen dollars (\$15.00) a license to engage in and conduct such the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in and conduct such the business. Except as hereinafter provided, a license issued under this subsection shall be a continuing license until revoked for failure to comply with the provisions of this Article. However, any person who has heretofore applied for and obtained the license, if the license was in force and effect as of July 1, 1979, shall not be required to apply for and obtain a new license.~~

~~A license issued under this section becomes void if the license holder Any person who ceases to be engaged in any a business for which a privilege tax is imposed by this Article, and who Article and remains continuously out of business for a period of five years. The burden of proving that a license is still valid is on the license holder. years shall apply for and obtain a new license from the Secretary upon the payment of a tax of five dollars (\$5.00), and any license previously issued under this section shall be void. The burden of proof after such period shall be upon the taxpayer to show that he did engage in such business within the period, and that no new license is required.~~

A retailer who sells tangible personal property at a flea market shall conspicuously display his sales tax license when making sales at the flea market."

Sec. 2. G.S. 105-164.5 reads as rewritten:

" § 105-164.5. *Imposition of tax; wholesale merchant.*

There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person who engages in the business of selling tangible personal property at wholesale in this State as defined herein, the same to be collected and the amount to be determined in the following manner, to wit: State as follows:

- (1) Every wholesale merchant as defined in this Article shall apply for and obtain an annual license and ~~pay tax therefor of ten dollars (\$10.00), pay for the license a tax of twenty-five dollars (\$25.00). Such annual~~ This license tax shall be paid for in advance within the first 15 days of July in each year or, in the case of a new business, within 15 days after business is commenced. Manufacturers making wholesale sales, as defined in this Article, of their own manufactured products, directly and exclusively from the place where ~~such articles of tangible personal property the products are manufactured are not are manufactured, shall not be~~ required to obtain an annual wholesale license.

- (2) The sale of any tangible personal property by any wholesale merchant to anyone other than to a registered retailer, wholesale ~~merchant~~ merchant, or nonresident retail or wholesale merchant ~~as defined~~ for resale shall be taxable at the rate ~~of tax~~ provided in this Article upon the retail sale of tangible personal property.
- (3) The sale of any tangible personal property by any wholesale merchant to a nonresident retail or wholesale merchant must be in strict compliance with ~~such regulations as may be promulgated~~ rules adopted by the Secretary. ~~Secretary and which are applicable to such sales. Any sale which~~ A sale that does not conform to such the regulations shall be rules is taxable at the rate ~~of tax~~ provided in this Article upon the retail sale of tangible personal property.
- (4) Every wholesale merchant who sells tangible personal property to retailers or nonresident retail or wholesale merchants for resale shall deliver to ~~such the~~ customer a bill of sale for each ~~sale of such tangible personal property sale~~, whether ~~sold~~ for cash or on credit, ~~credit and shall make and retain a duplicate or carbon copy of each such bill of sale bill of sale, and shall keep on file all such duplicate bills each bill of sale on file~~ for at least three years from the date of sale. Failure to comply with ~~the provisions of~~ this subsection shall subject the wholesale merchant to liability for tax upon ~~such the~~ sales at the rate ~~of tax~~ levied in this Article upon retail sales.
- (5) The tax levied is ~~and shall be~~ in addition to all other taxes ~~whether levied in the form of excise, license or privilege or other taxes."~~

Sec. 3. G.S. 105-164.6(f) reads as rewritten:

"(f) Every retailer engaged in business in this State selling or delivering tangible personal property for storage, ~~use~~ use, or consumption in this State shall ~~immediately after July 1, 1979,~~ apply for and obtain from the Secretary upon the payment of ~~the sum of five dollars (\$5.00)~~ fifteen dollars (\$15.00) a license to engage in and conduct ~~such the~~ business upon the condition that ~~such the~~ person shall pay the tax accruing to the State of North Carolina under the provisions of this Article, and ~~he~~ under this Article; the person shall thereby be duly licensed and registered to engage in ~~and conduct such the~~ business. Except as hereinafter provided, a license issued under this subsection shall be a continuing license until revoked for failure to comply with the provisions of this Article. ~~However, any person who has heretofore applied for and obtained such license, and such~~

~~license was in force and effect as of July 1, 1979, shall not be required to apply for and obtain a new license.~~

~~A license issued under this section becomes void if the license holder Any person who ceases to be engaged in any a business for which a tax is imposed by this Article, and who Article and remains continuously out of business for a period of five years. The burden of proving that a license is still valid is on the license holder. years shall apply for and obtain a new license from the Secretary upon the payment of a tax of five dollars (\$5.00), and any license previously issued under this section shall be void. The burden of proof after such period shall be upon the taxpayer to show that he did engage in such activity within the period, and that no new license is required."~~

Sec. 4. G.S. 105-164.16(b) reads as rewritten:

"(b) General Reporting Periods. -- Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than ~~twenty-five dollars (\$25.00)~~ fifty dollars (\$50.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars (\$20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars (\$20,000) each month to file a return on a semimonthly basis. In determining the amount of tax due from a taxpayer for a reporting period the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an

estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount he remitted with his estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed."

Sec. 5. G.S. 105-164.29 reads as rewritten:

"§ 105-164.29. Application for licenses by wholesale merchants and retailers.

Every application for a license by a wholesale merchant or retailer shall be made upon a form prescribed by the Secretary and shall set forth ~~the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other~~ all information as the Secretary may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some other person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of ~~his~~ the person's authority. ~~Provided, however, that persons, firms, or corporations, A~~ wholesale merchant or retailer whose business extends into more than one county ~~shall be~~ is required to secure only one license ~~under the provisions of this Article which license shall~~ to cover all operations of ~~such company~~ the business throughout the ~~State of North Carolina.~~ State.

When the required application has been made the Secretary shall issue a license to the applicant. ~~grant and issue to each applicant such license.~~ A license is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated ~~therein,~~ in the license. The license holder shall display the

license conspicuously at all times at the place for which it was issued. It shall be at all times conspicuously displayed at the place of which issued.

A ~~retailer~~ person whose license has been previously suspended or revoked shall pay the Secretary ~~the sum of five dollars (\$5.00)~~ fifteen dollars (\$15.00) for the reissuance ~~or renewal of such of the~~ license. A wholesale merchant whose annual license has been previously suspended or revoked shall pay the Secretary ~~the sum of ten dollars (\$10.00)~~ twenty-five dollars (\$25.00) for the reissuance ~~or renewal of such of the~~ license for the year or fraction thereof for which said license is reissued or renewed, remainder of the license year.

~~Whenever any wholesale merchant or retailer a license holder fails to comply with any provision of this Article or any rule or regulation of the Secretary relating thereto, this Article, the Secretary, upon hearing, after giving the wholesale merchant or retailer license holder 10 days' notice in writing, specifying the time and place of hearing and requiring him the license holder to show cause why his the license should not be revoked, may revoke or suspend the license. license held by such wholesale merchant or retailer. The notice may be served personally or by registered mail directed to the last known address of the person, license holder. All provisions with respect to review and appeals of the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3, and 105-241.4 of the General Statutes shall be applicable apply to this section.~~

Any wholesale merchant or retailer who engages in business as a seller in this State without a license or after ~~his the~~ license has been suspended or revoked, and each officer of any corporation ~~which~~ that so engages in business shall be guilty of a misdemeanor and subject to a fine of ~~not exceeding up to~~ five hundred dollars (\$500.00) for each such offense."

Sec. 6. G.S. 105-164.38 reads as rewritten:

"§ 105-164.38. Tax shall be a lien.

The tax imposed by this Article shall be a lien upon ~~the stock of goods and/or any other all personal property of any person subject to the provisions of this Article who shall sell out or in any manner transfer his business or stock of goods or shall quit business, and such person shall be required to make out~~ who is required by this Article to obtain a license to engage in business and who stops engaging in the business by transferring the business, transferring the stock of goods of the business, or going out of business. A person who stops engaging in business shall file the return provided for under Division IV of required by this Article within 30 days after the date he sold out his business or stock of goods or quit transferring the business, transferring the stock of goods of the business, or going out

~~of business. business and his successor in~~ Any person to whom the business or the purchaser of the entire stock of goods was transferred shall be required to withhold sufficient of the purchase money or money's worth in the event there is an exchange of properties to cover the amount of said from the consideration paid for the business or stock of goods an amount sufficient to cover the taxes due and unpaid until such time as the former owner shall produce person selling the business or stock of goods produces a receipt statement from the Secretary showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser of person who buys a business or stock of goods shall fail fails to withhold purchase money as above provided, and the taxes shall be due and an amount sufficient to cover the taxes and the taxes remain unpaid after the 30-day period allowed, he shall be the buyer is personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner. The transferee shall be liable for payment of any sales and/or use taxes due by the transferor the unpaid taxes, to the extent of the purchase price consideration paid by the transferee or fair market value of the property transferred whichever is greater, by the buyer for the business or the stock of goods. The period of limitations for assessing liability against the buyer of a business or the stock of goods of a business and for enforcing the lien against the property shall expire one year after the end of the period of limitations for assessment against the person who sold the business or the stock of goods. Except as otherwise provided in this section, a The transferee or successor in business and the liability of the transferee of successor in business shall be person who buys a business or the stock of goods of a business and that person's liability for unpaid taxes are subject to the provisions of G.S. 105-241.1, 105-241.2, 105-241.3, and 105-241.4 and to other remedies for the collection of taxes to the same extent as if the transferee or successor in business person had incurred the original tax liability."

Sec. 7. G.S. 105-253 reads as rewritten:

" § 105-253. *Personal liability of officers, trustees, or receivers.*

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary of Revenue, having in his Revenue who has custody of funds of the corporation, corporation and who allows said the funds to be paid out or distributed to the stockholders of said the corporation without having satisfied remitted to the Secretary of Revenue for any State taxes which that are due and have accrued, shall be personally responsible liable for the payment of said the tax, and in addition thereto shall be subject to a an additional penalty of not more than equal to the amount of tax, nor less than

~~twenty-five percent (25%) of such tax found to be due or accrued, tax due.~~

(b) Each responsible corporate officer is ~~made~~ personally and individually ~~liable; liable for all of the following:~~

- (1) ~~For all~~ All sales and use taxes collected by a corporation upon taxable transactions of the corporation, ~~which liability shall be satisfied upon timely remittance of such taxes to the Secretary by the corporation;~~ corporation.
- (2) ~~For all~~ All sales and use taxes due upon taxable transactions of the corporation but upon which the corporation failed to collect the tax, but only if the responsible officer knew, or in the exercise of reasonable care should have known, that the tax was not being ~~collected; and collected.~~
- (3) ~~For all~~ All taxes due from the corporation pursuant to the provisions of Article 36 and Article 36A of Subchapter V of this Chapter.

~~His~~ The liability of the responsible corporate officer is ~~shall be~~ satisfied upon timely remittance of ~~such the~~ tax to the Secretary by the corporation. If ~~said tax shall remain the tax remains~~ unpaid by the corporation, ~~after the same~~ corporation after it is due and payable, the Secretary of Revenue may assess the tax against, and collect the tax from, any responsible corporate officer in accordance with the provisions of G.S. 105-241.1, ~~which officer shall be the 'taxpayer' in such case, as referred to in G.S. 105-241.1 et seq, the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the words term 'responsible corporate officers' mean the president and the treasurer of a corporation and may include such officer' includes the president and the treasurer of the corporation and any other officers as have been assigned the duty of filing tax returns and remitting the taxes to the Secretary of Revenue on behalf of the corporation. Any penalties which that may be imposed pursuant to the provisions of under G.S. 105-236 and which are applicable that apply to a deficiency shall apply to any assessment provided for herein, made under this section. All other~~ The provisions of this Article 9, Schedule J of the Revenue Laws ~~shall apply to such apply to an assessment made under this section to the extent that they are not inconsistent with the provisions of this section.~~

The period of limitations for assessing a responsible corporate officer for unpaid taxes under this section shall expire one year after the expiration of the period of limitations for assessment against the corporation.

(c) The Secretary of State shall ~~withhold the issuance of any certificate not file articles of dissolution to, or withdrawal of, any corporation, domestic or foreign, of a domestic corporation or issue a~~

~~certificate of withdrawal of a foreign corporation until the receipt by him of a notice from notified by the Secretary of Revenue to the effect that any such the corporation has met the requirements with respect to reports and taxes required imposed by this Subchapter. Subchapter or Subchapter V of this Chapter."~~

Sec. 8. Section 3 of Chapter 347 of the 1991 Session Laws is repealed.

Sec. 9. G.S. 105-159.1, as amended by Section 13 of Chapter 45 of the 1991 Session Laws, reads as rewritten:

"§ 105-159.1. *Designation of tax by individual to political party.*

(a) Every individual whose income tax liability for the taxable year is one dollar (\$1.00) or more may designate on his or her income tax return that one dollar (\$1.00) of the tax shall be ~~paid to the State Treasurer for the use of all political parties,~~ credited to the North Carolina Political Parties Financing Fund. In the case of a married couple filing a joint return whose income tax liability for the taxable year is two dollars (\$2.00) or more, each spouse may designate on the income tax return that one dollar (\$1.00) of the tax shall be ~~paid to the State Treasurer for the use of all political parties,~~ credited to the North Carolina Political Parties Financing Fund. ~~The Secretary shall credit all amounts so designated to the State Board of Elections for deposit with the State Treasurer for the use of all political parties upon~~ Amounts credited to the Fund shall be allocated among the political parties on a pro rata basis according to their respective party voter registrations ~~according to as determined by~~ the most recent certification of the State Board of Elections. As used in this section, the term 'political party' means one of the following that has at least one percent (1%) of the total number of registered voters in the State:

- (1) A political party that at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors. ~~or~~
- (2) A group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes.

(b) ~~For each quarterly period beginning on or after January 1, 1978, on or before the last day of the month following the close of the quarterly period, the Secretary shall remit all funds designated pursuant to this section collected during the preceding quarter to the State Treasurer who shall deposit them in an interest-bearing account to be known as the North Carolina Political Parties Financing Fund. Any interest earned on funds so deposited shall be credited to the political party to which the funds were allocated. Amounts designated under subsection (a) shall be credited to the North Carolina Political~~

Parties Financing Fund on a quarterly basis. Interest earned by the Fund shall be credited to the Fund and shall be allocated among the political parties on the same basis as the principal of the Fund. A report to the State Treasurer, The State Board of Elections, and Elections, which administers the Fund, shall make a quarterly report to each State party chairman shall accompany each remittance, and shall detail stating the amount of funds forwarded, allocated to each party for that quarter, the cumulative total of funds forwarded allocated to each party to date for the year, and an estimate of the probable total amount to be collected and forwarded allocated to each party for that calendar year.

(c) Repealed by Session Laws 1983, c. 481.

(d) The Secretary shall amend the income tax return in order that all taxpayers desiring to make the political contributions authorized in this section may do so by designating on the front face of the tax return. The line of authorization for the designation shall be color contrasted with the color scheme of the remainder of the income tax return. The return or its accompanying explanatory instruction shall readily indicate that any designations neither increase nor decrease an individual's tax liability.

(e) A paid preparer of tax returns may not designate on a return that the taxpayer does or does not desire to make the political contribution authorized in this section unless the taxpayer or the taxpayer's spouse has consented to the designation."

Sec. 10. G.S. 130A-309.12(b)(3) reads as rewritten:

"(3) Ten percent (10%) of the proceeds of the scrap tire disposal fee tax imposed pursuant to G.S. 130A-309.55 and G.S. 130A-309.56, under Article 5B of Chapter 105 of the General Statutes."

Sec. 11. Sections 2 and 4 of this act become effective July 1, 1992. Sections 8 through 11 of this act are effective upon ratification. The remaining sections of this act become effective August 1, 1991. Sections 1, 3, and 5 of this act apply to licenses issued or renewed on or after August 1, 1991. This act does not extend a period of limitations that expired before the act is ratified.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 358

CHAPTER 691

AN ACT TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO IMPOSE A MONETARY PENALTY FOR VIOLATION OF RULES GOVERNING NUTRITION STANDARDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-22 is amended by adding the following new subsection to read:

"(c1) The Secretary may impose a monetary penalty on a vendor who violates rules adopted by the Commission pursuant to Article 13 of this Chapter when the Secretary determines that disqualification would result in hardship to participants in the Women, Infants, and Children (WIC) program. The penalty shall be calculated using the following formula: multiply five percent (5%) times the average dollar amount of the vendor's monthly redemptions of WIC food instruments for the 12-month period immediately preceding disqualification, then multiply that product by the number of months of the disqualification period determined by the Secretary."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

S.B. 816

CHAPTER 692

AN ACT TO MAKE TECHNICAL AND CLARIFYING AMENDMENTS TO THE CERTIFICATE OF NEED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-176 reads as rewritten:

" § 131E-176. *Definitions.*

As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (1) 'Ambulatory surgical facility' means a facility designed for the provision of an ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical

procedures which do not constitute an ambulatory surgical program as defined in subdivision (1a) and which are performed in a physician's or dentist's office does not make that office an ambulatory surgical facility.

- (1a) 'Ambulatory surgical program' means a formal program for providing on a same-day basis those surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to surgery, to be medically unnecessary.
- (2) 'Bed capacity' means space used exclusively for inpatient care, including space designed or remodeled for licensed inpatient beds even though temporarily not used for such purposes. The number of beds to be counted in any patient room shall be the maximum number for which adequate square footage is provided as established by rules of the Department except that single beds in single rooms are counted even if the room contains inadequate square footage. The term 'bed capacity' also refers to the number of dialysis stations in kidney disease treatment centers, including freestanding dialysis units.
- (2a) 'Capital expenditure' means an expenditure which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.
- (3) 'Certificate of need' means a written order of the Department setting forth the affirmative findings that a proposed project sufficiently satisfies the plans, standards, and criteria prescribed for such projects by this Article and by rules of the Department as provided in G.S. 131E-183(a) and which affords the person so designated as the legal proponent of the proposed project the opportunity to proceed with the development of such project.
- (4) 'Certified cost estimate' means an estimate of the total cost of a project certified by ~~the proponent of the project within 60 days prior to or subsequent to the date of submission of the proposed new institutional health service to the Department and which is based on:~~ a licensed architect or engineer which is based on:
 - a. Preliminary plans and specifications;
 - b. Estimates of the cost of equipment certified by the manufacturer or vendor; and

- c. Estimates of the cost of management and administration of the project.
- (5) 'Change in bed capacity' means (i) any relocation of health service facility beds, or dialysis stations from one licensed facility or campus to another, or (ii) any redistribution of health service facility bed capacity among the categories of health service facility bed as defined in G.S. 131E-176 (9c), or (iii) any increase in the number of health service facility beds, or dialysis stations in kidney disease treatment centers, including freestanding dialysis units.
- (5a) 'Chemical dependency treatment facility' means a public or private facility, or unit in a facility, which is engaged in providing 24-hour a day treatment for chemical dependency or substance abuse. This treatment may include detoxification, administration of a therapeutic regimen for the treatment of chemically dependent or substance abusing persons and related services. The facility or unit may be:
- a. A unit within a general hospital or an attached or freestanding unit of a general hospital licensed under Article 5, Chapter 131E, of the General Statutes,
 - b. A unit within a psychiatric hospital or an attached or freestanding unit of a psychiatric hospital licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C,
 - c. A freestanding facility specializing in treatment of persons who are substance abusers or chemically dependent licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C; and may be identified as 'chemical dependency, substance abuse, alcoholism, or drug abuse treatment units,' 'residential chemical dependency, substance abuse, alcoholism or drug abuse facilities,' 'social setting detoxification facilities' and 'medical detoxification facilities,' or by other names if the purpose is to provide treatment of chemically dependent or substance abusing persons, but shall not include halfway houses or recovery farms.
- (5b) 'Chemical dependency treatment beds' means beds that are licensed for detoxification or for the inpatient treatment of chemical dependency. Residential treatment beds for the treatment of chemical dependency or

substance abuse are chemical dependency treatment beds but those residential treatment beds that were developed and operated without a certificate of need shall not be counted in the inventory of chemical dependency treatment beds in the State Health Plans prepared by the Department pursuant to G.S. 131E-177(4) after July 1, 1987. The State Health Plans prepared after July 1, 1987, shall also contain no limitation on the proportion of the overall inventory of chemical dependency treatment beds located in any of the types of chemical dependency treatment facilities identified in subdivision (5a).

- (6) 'Department' means the North Carolina Department of Human Resources.
- (7) To 'develop' when used in connection with health services, means to undertake those activities which will result in the offering of institutional health service not provided in the previous 12-month reporting period or the incurring of a financial obligation in relation to the offering of such a service.
- (8),(9) Repealed by Session Laws 1987, c. 511, s. 1.
- (9a) 'Health service' means an organized, interrelated medical, diagnostic, therapeutic, and/or rehabilitative activity that is integral to the clinical management of a sick, injured, or disabled person. 'Health service' does not include administrative and other activities that are not integral to clinical management.
- (9b) 'Health service facility' means a hospital; psychiatric facility; rehabilitation facility; long term care facility; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility for the mentally retarded; home health agency office; chemical dependency treatment facility; and ambulatory surgical facility.
- (9c) 'Health service facility bed' means a bed licensed for use in a health service facility in the categories of (i) acute care beds; (ii) psychiatric beds; (iii) rehabilitation beds; (iv) ~~intermediate nursing care or skilled nursing care beds; nursing care beds~~; (v) intermediate care beds for the mentally retarded; and (vi) chemical dependency treatment beds.
- (10) 'Health maintenance organization (HMO)' means a public or private organization which has received its certificate of authority under Article 67 of Chapter 58 of the General Statutes and which either is a qualified health maintenance

organization under Section 1310(d) of the Public Health Service Act or:

- a. Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X ray, emergency and preventive services, and out-of-area coverage;
- b. Is compensated, except for copayments, for the provision of the basic health care services listed above to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and
- c. Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organizations, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(11) ~~'Health systems agency' means an independent, private, nonprofit corporation, incorporated in this State, that engages in regional health planning and development functions.~~

(12) 'Home health agency' means a private organization or public agency, whether owned or operated by one or more persons or legal entities, which furnishes or offers to furnish home health services.

'Home health services' means items and services furnished to an individual by a home health agency, or by others under arrangements with such others made by the agency, on a visiting basis, and except for paragraph e. of this subdivision, in a place of temporary or permanent residence used as the individual's home as follows:

- a. Part-time or intermittent nursing care provided by or under the supervision of a registered nurse;
- b. Physical, occupational or speech therapy;
- c. Medical social services, home health aid services, and other therapeutic services;
- d. Medical supplies, other than drugs and biologicals and the use of medical appliances;
- e. Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home health agency at a hospital or

nursing home facility or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in his home, or which are furnished at such facility while he is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service.

- (13) 'Hospital' means a public or private institution which is primarily engaged in providing to inpatients, by or under supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. The term includes all facilities licensed pursuant to G.S. 131E-77 of the General Statutes.
- (13a) 'Hospice' means any coordinated program of home care with provision for inpatient care for terminally ill patients and their families. This care is provided by a medically directed interdisciplinary team, directly or through an agreement under the direction of an identifiable hospice administration. A hospice program of care provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual and special needs of patients and their families, which are experienced during the final stages of terminal illness and during dying and bereavement.
- (14) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.
- (14a) 'Intermediate care facility for the mentally retarded' means facilities licensed pursuant to Article 2 of Chapter 122C of the General Statutes for the purpose of providing health and habilitative services based on the developmental model and principles of normalization for persons with mental retardation, autism, cerebral palsy, epilepsy or related conditions.
- ~~(14b) 'Intermediate nursing care' means the provision of health-related care and services on a regular basis to individuals who do not require the degree of care and treatment that hospitals or skilled nursing care provide, but who because of their mental or physical condition require health-related care and services above the level of room and board.~~

- (14c) 'Long term care facility' means a health service facility whose bed complement of health service facility beds is composed principally of ~~skilled nursing beds or intermediate nursing care facility beds, or both, beds.~~
- (15) Repealed by Session Laws 1987, c. 511, s. 1.
- (16) 'New institutional health services' means:
- a. The construction, development, or other establishment of a new health service facility;
 - b. The obligation by any person of any capital expenditure on behalf of or for a health service facility as defined in subsection(9b) of this section exceeding two million dollars (\$2,000,000), other than one to acquire an existing health service facility or to replace such a facility destroyed or irreparably damaged by accident or natural disaster. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds two million dollars (\$2,000,000);
 - c. Any change in bed capacity as defined in G.S.131E-176(5);
 - d. The offering of dialysis services or home health services by or on behalf of a health service facility if those services were not offered within the previous 12 months by or on behalf of the facility;
 - e. A change in a project that was subject to certificate of need review and for which a certificate of need was issued, if the change is proposed during the development of the project or within one year after the project was completed. For purposes of this subdivision, a change in a project is a change of more than fifteen percent (15%) of the approved capital expenditure amount or the addition of a health service that is to be located in the facility, or portion thereof, that was constructed or developed in the project;
 - f. The offering of a health service by or on behalf of a health service facility if the service was not offered by or on behalf of the health service facility in the previous 12 months and if the annual operating costs of the service equal or exceed one million dollars

(\$1,000,000), or the expansion of an existing health service when an annual operating cost of one million dollars (\$1,000,000) is directly associated with the offering of the expanded portion of the service:

- g. to k. Repealed by Session Laws 1987, c. 511, s. 1.
 - l. The purchase, lease, or acquisition of any health service facility, or portion thereof, or a controlling interest in the health service facility or portion thereof, if the health service facility was developed under a certificate of need issued pursuant to G.S. 131E-180;
 - m. Any conversion of nonhealth service facility beds to health service facility beds;
 - n. The construction, development, or other establishment of a hospice if the operating budget thereof is in excess of one hundred thousand dollars (\$100,000).
 - o. The opening of an additional office by an existing home health agency within its service area as defined by rules adopted by the Department; or the opening of any office by an existing home health agency outside its service area as defined by rules adopted by the Department.
- (17) 'North Carolina State Health Coordinating Council' means the Council that prepares, with the Department of Human Resources, the State Medical Facilities Plan, a component of the State Health Plan.
- (17a) 'Nursing care' means:
- a. Skilled nursing care and related services for residents who require medical or nursing care;
 - b. Rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or
 - c. Health-related care and services provided on a regular basis to individuals who because of their mental or physical condition require care and services above the level of room and board, which can be made available to them only through institutional facilities.
- These are services which are not primarily for the care and treatment of mental diseases.
- (18) To 'offer,' when used in connection with health services, means that the health service facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.
- (19) 'Person' means an individual, a trust or estate, a partnership, a corporation, including associations, joint

stock companies, and insurance companies: the State, or a political subdivision or agency or instrumentality of the State.

- (20) 'Project' or 'capital expenditure project' means a proposal to undertake a capital expenditure that results in the offering of a new institutional health service as defined by this Article. A project, or capital expenditure project, or proposed project may refer to the project from its earliest planning stages up through the point at which the specified new institutional health service may be offered. In the case of facility construction, the point at which the new institutional health service may be offered must take place after the facility is capable of being fully licensed and operated for its intended use, and at that time it shall be considered a health service facility.
- (21) 'Psychiatric facility' means a public or private facility licensed pursuant to Article 2 of Chapter 122C of the General Statutes and which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.
- (22) 'Rehabilitation facility' means a public or private inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent, professional supervision.
- ~~(23) 'Skilled nursing care' means the provision of that degree of care to inpatients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.~~
- (24) 'State Health Plan' means the plan prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council and approved by the Governor.
- (25) 'State Medical Facilities Plan' means a component of the State Health Plan prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council, and approved by the Governor.
- (26) Repealed by Session Laws 1983 (Regular Session, 1984), c.1002, s. 9.
- (27) Repealed by Session Laws 1987."

Sec. 2. G.S. 131E-177 reads as rewritten:

" § 131E-177. *Department of Human Resources is designated State Health Planning and Development Agency; powers and duties.*

The Department of Human Resources is designated as the State Health Planning and Development Agency for the State of North Carolina, and is empowered to exercise the following powers and duties:

- (1) To establish standards and criteria or plans required to carry out the provisions and purposes of this Article and to adopt rules pursuant to Chapter 150B of the General Statutes, to carry out the purposes and provisions of this Article;
- (2) Adopt, amend, and repeal such rules and regulations, consistent with the laws of this State, as may be required by the federal government for grants-in-aid for health service facilities and health planning which may be made available by the federal government. This section shall be liberally construed in order that the State and its citizens may benefit from such grants-in-aid;
- (3) Define, by rule, procedures for submission of periodic reports by persons or health service facilities subject to agency review under this Article;
- (4) Develop policy, criteria, and standards for health service facilities planning, conduct statewide inventories of and make determinations of need for health service facilities, and develop a State Health Plan;
- (5) Implement, by rule, criteria for project review;
- (6) Have the power to grant, deny, or withdraw a certificate of need and to impose such sanctions as are provided for by this Article;
- (7) Solicit, accept, hold and administer on behalf of the State any grants or bequests of money, securities or property to the Department for use by the Department ~~or health systems agencies~~ in the administration of this Article; and
- (8) Repealed by Session Laws 1987, c. 511, s. 1.
- (9) Establish and collect fees for submitting applications for certificates-of-need, which fees shall be based on the total cost of the project for which the applicant is applying. This fee may not exceed fifteen thousand dollars (\$15,000) and may not be less than four hundred dollars (\$400.00).
- (10) The authority to review all records in any recording medium of any person or health service facility subject to agency review under this Article which pertain to construction and acquisition activities, staffing or costs and charges for patient care, including but not limited to, construction contracts, architectural contracts, consultant contracts, purchase orders, cancelled checks, accounting

and financial records, debt instruments, loan and security agreements, staffing records, utilization statistics and any other records the Department deems to be reasonably necessary to determine compliance with this Article.

The Secretary of Human Resources shall have final decision-making authority with regard to all functions described in this section."

Sec. 3. G.S. 131E-178 reads as rewritten:

" § 131E-178. *Activities requiring certificate of need.*

(a) No person shall offer or develop a new institutional health service without first obtaining a certificate of need from the Department; provided, however, no hospital licensed pursuant to Article 5 of this Chapter that was established to serve a minority population that would not otherwise have been served and that continues to serve a minority population may be required to obtain a certificate of need for transferring up to 65 beds to ~~skilled nursing home nursing care facility~~ beds.

(b) No person shall make an acquisition by donation, lease, transfer, or comparable arrangement without first obtaining a certificate of need from the Department, if the acquisition would have been a new institutional health service if it had been made by purchase. In determining whether an acquisition would have been a new institutional health service the fair market value of the asset shall be deemed to be the purchase price.

(c) No person shall incur an obligation for a capital expenditure which is a new institutional health service without first obtaining a certificate of need from the Department. An obligation for a capital expenditure is incurred when:

- (1) An enforceable contract, excepting contracts which are expressly contingent upon issuance of a certificate of need, is entered into by a person for the construction, acquisition, lease or financing of a capital asset;
- (2) A person takes formal action to commit funds for a construction project undertaken as his own contractor; or
- (3) In the case of donated property, the date on which the gift is completed.

(d) Where the estimated cost of a proposed capital expenditure is certified by a licensed architect or engineer to be equal to or less than the expenditure minimum for capital expenditure, such expenditure shall be deemed not to exceed the expenditure minimum for capital expenditures regardless of the actual amount expended, provided that the following conditions are met:

- (1) The certified estimated cost is prepared in writing 60 days or more before the obligation for the capital expenditure is incurred. Certified cost estimates shall be available for

inspection at the facility and sent to the Department upon its request.

- (2) The facility on whose behalf the expenditure was made notifies the Department in writing within 30 days of the date on which such expenditure is made if the expenditure exceeds the expenditure minimum for capital expenditures. The notice shall include a copy of the certified cost estimate.

(e) The Department may grant certificates of need which permit capital expenditures only for predevelopment activities. Predevelopment activities include the preparation of architectural designs, plans, working drawings, or specifications, the preparation of studies and surveys, and the acquisition of a potential site."

Sec. 4. G.S. 131E-179 reads as rewritten:

"§ 131E-179. *Research activities.*

(a) Notwithstanding any other provisions of this Article, a health service facility may offer new institutional health services to be used solely for research, or incur the obligation of a capital expenditure solely for research, without a certificate of need, if the Department grants an exemption. The Department shall grant an exemption if the health service facility files a notice of intent with the Department in accordance with rules promulgated by the Department and if the Department finds that the offering or obligation will not:

- (1) Affect the charges of the health service facility for the provision of medical or other patient care services other than services which are included in the research;
- (2) Substantially change the bed capacity of the facility; or
- (3) Substantially change the medical or other patient care services of the facility.

(b) After a health service facility has received an exemption pursuant to subsection (a) of this section, it shall not offer the new institutional health services, or use a facility acquired through the capital expenditure, in a manner which affects the charges of the facility for the provision of medical or other patient care services, other than the services which are included in the research and shall not charge patients for the use of the service for which an exemption has been granted, without first obtaining a certificate of need from the ~~Department~~. Department; provided, however, that any facility or service acquired or developed under the exemption provided by this section shall not be subject to the foregoing restrictions on its use if the facility or service could otherwise be offered or developed without a certificate of need.

(c) Any of the activities described in subsection (a) of this section shall be deemed to be solely for research even if they include patient

care provided on an occasional and irregular basis and not as a part of the research program."

Sec. 5. G.S. 131E-181 reads as rewritten:

"§ 131E-181. *Nature of certificate of need.*

(a) A certificate of need shall be valid only for the defined scope, physical location, and person named in the application. A certificate of need shall not be transferred or assigned except as provided in 131E-189(c).

(b) A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need. The Department shall require any recipient of a certificate of need, or its successor, whose service is in operation to submit to the Department evidence that the recipient, or its successor, is in material compliance with the representations made in its application for the certificate of need which granted the recipient the right to operate that service. In determining whether the recipient of a certificate of need, or its successor, is operating a service which materially differs from the representations made in its application for that certificate of need, the Department shall consider cost increases to the recipient, or its successor, including, but not limited to, the following:

- (1) Any increase in the consumer price index;
- (2) Any increased cost incurred because of Government requirements, including federal, State, or any political subdivision thereof; and
- (3) Any increase in cost due to professional fees or the purchase of services and supplies.

(c) Whenever a certificate of need is issued more than 12 months after the application for the certificate of need began review, the Department shall adjust the capital expenditure amount proposed by increasing it to reflect any inflation in the Department of Commerce's Construction Cost Index that has occurred since the date when the application began review; and the Department shall use this recalculated capital expenditure amount in the certificate of need issued for the project."

Sec. 6. G.S. 131E-183(b) reads as rewritten:

"(b) The Department is authorized to adopt rules for the review of particular types of applications that will be used in addition to those criteria outlined in subsection (a) of this section and may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. No such rule adopted by the Department shall require an academic medical center

teaching hospital, as defined by the State Medical Facilities Plan, to demonstrate that any facility or service at another hospital is being appropriately utilized in order for that academic medical center teaching hospital to be approved for the issuance of a certificate of need to develop any similar facility or service."

Sec. 7. G.S. 131E-185 reads as rewritten:

" § 131E-185. *Review process.*

(a) Repealed by Session Laws 1987, c. 511, s. 1.

(a1) Except as provided in subsection (c) of this section, there shall be a time limit of 90 days for review of the applications, beginning on the day established by rule as the day on which applications for the particular service in the service area shall begin review.

(1) Any person may file written comments and exhibits concerning a proposal under review with the Department, not later than 45 30 days after the date on which the application begins review. These written comments may include:

- a. Facts relating to the service area proposed in the application;
- b. Facts relating to the representations made by the applicant in its application, and its ability to perform or fulfill the representations made;
- c. Discussion and argument regarding whether, in light of the material contained in the application and other relevant factual material, the application complies with relevant review criteria, plans, and standards.

(2) ~~At least 15, but no~~ No more than 30 20 days from the conclusion of the written comment period, the Department shall ensure that a public hearing is conducted at a place within the appropriate health service area ~~at which oral presentations~~ if one or more of the following circumstances apply; the review to be conducted is competitive; the proponent proposes to spend five million dollars (\$5,000,000) or more; a written request for a public hearing is received before the end of the written comment period from an affected party as defined in G.S. 131E-188(c); or the agency determines that a hearing is in the public interest. At such public hearing oral arguments may be made regarding the application or applications under review; and this public hearing shall include the following:

- a. An opportunity for the proponent of each application under review to respond to the written comments submitted to the Department about its application;

- b. An opportunity for any affected person as defined in G.S. 131E-188(c), except one of the proponents, to present comments regarding the applications under review;
- c. An opportunity for a representative of the Department, or such other person or persons who are designated by the Department to conduct the hearing, to question each proponent of applications under review with regard to the contents of the application;

The Department shall maintain a recording of ~~the~~ any required public hearing on ~~each~~ an application until such time as the Department's final decision is issued, or until a final agency decision is issued pursuant to a contested case hearing, whichever is later; and any person may submit a written synopsis or verbatim statement that contains the oral presentation made at the hearing.

- (3) The Department may contract or make arrangements with a person or persons located within each health service area for the conduct of such public hearings as may be necessary. The Department shall publish, in each health service area, notice of the contracts that it executes for the conduct of those hearings. ~~If a health systems agency is in operation in a health service area, the Department shall use that health systems agency for the conduct of the public hearings in that area. A health systems agency may make recommendations on any matter covered in this Article, but no such recommendation shall interfere with the timetables of the review process contained in this Article.~~
- (4) Within 15 days from the beginning of the review of an application or applications proposing the same service within the same service area, the Department shall publish notice of the deadline for receipt of written comments, of the time and place scheduled for the public hearing regarding the application or applications under review, and of the name and address of the person or agency that will preside.
- (5) The Department shall maintain all written comments submitted to it during the written comment stage and any written submissions received at the public hearing as part of the Department's file respecting each application or group of applications under review by it. The application, written comments, and public hearing comments, together with all documents that the Department used in arriving at its decision, from whatever source, and any documents that reflect or set out the Department's final analysis of the

application or applications under review, shall constitute the Department's record for the application or applications under review.

(b) The Department shall issue as provided in this Article a certificate of need with or without conditions or reject the application within the review period.

(c) The Department shall promulgate rules establishing criteria for determining when it would not be practicable to complete a review within 90 days from the beginning date of the review period for the application. If the Department finds that these criteria are met for a particular project, it may extend the review period for a period not to exceed 60 days and provide notice of such extension to all applicants."

Sec. 8. G.S. 131E-188 reads as rewritten:

" § 131E-188. *Administrative and judicial review.*

(a) After a decision of the Department to issue, deny or withdraw a certificate of need or exemption, any affected person, as defined in subsection (c) of this section, shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department makes its decision. When a petition is filed, the Department shall send notification of the petition to the proponent of each application that was reviewed with the application for a certificate of need that is the subject of the petition.

A contested case shall be conducted in accordance with the following timetable:

- (1) An administrative law judge or a hearing officer, as appropriate, shall be assigned within 15 days after a petition is filed.
- (2) The parties shall complete discovery within 90 days after the assignment of the administrative law judge or hearing officer.
- (3) The hearing at which sworn testimony is taken and evidence is presented shall be held within 45 days after the end of the discovery period.
- (4) The administrative law judge or hearing officer shall make his recommended decision within 75 days after the hearing.
- (5) The Department shall make its final decision within 30 days of receiving the ~~recommended decision.~~ official record of the case from the Office of Administrative Hearings.

The administrative law judge or hearing officer assigned to a case may extend the deadlines in subdivisions (2) through (4) so long as the administrative law judge or hearing officer makes his recommended decision in the case within 270 days after the petition is

filed. The Department may extend the deadline in subdivision (5) for up to 30 days by giving all parties written notice of the extension.

(a1) ~~As a condition precedent to proceeding with~~ On or before the date of filing a petition for a contested case hearing on the approval of an applicant for a certificate of need, the petitioner shall deposit a bond with the clerk of superior court where the new institutional health service that is the subject of the petition is proposed to be located. The bond shall be secured by cash or its equivalent in an amount equal to five percent (5%) of the cost of the proposed new institutional health service that is the subject of the petition, but may not be less than five thousand dollars (\$5,000) and may not exceed fifty thousand dollars (\$50,000). A petitioner who received approval for a certificate of need and is contesting only a condition in the certificate is not required to file a bond under this subsection.

The applicant who received approval for the new institutional health service that is the subject of the petition may bring an action against a bond filed under this subsection in the superior court of the county where the bond was filed. Upon finding that the petition for a contested case was frivolous or filed to delay the applicant, the court may award the applicant part or all of the bond filed under this subsection.

(b) Any affected person who was a party in a contested case hearing shall be entitled to judicial review of all or any portion of any final decision of the Department in the following manner. The appeal shall be to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. The appeal of the final decision of the Department shall be taken within 30 days of the receipt of the written notice of decision required by G.S. 131E-187 and notice of appeal shall be filed with the Division of Facility Services, Department of Human Resources and with all other affected persons who were parties to the contested hearing.

(b1) Before filing an appeal of a decision by the Department granting a certificate of need, the affected person shall deposit a bond with the Clerk of the Court of Appeals. The bond shall be secured by cash or its equivalent in an amount equal to five percent (5%) of the cost of the proposed new institutional health service that is the subject of the appeal, but may not be less than five thousand dollars (\$5,000) and may not exceed fifty thousand dollars (\$50,000). A holder of a certificate of need who is appealing only a condition in the certificate is not required to file a bond under this subsection.

If the Court of Appeals finds that the appeal was frivolous or filed to delay the applicant, the court shall remand the case to the superior court of the county where a bond was filed for the contested case

hearing on the certificate of need. The superior court may award the holder of the certificate of need part or all of the bond. The court shall award the holder of the certificate of need reasonable attorney fees and costs incurred in the appeal to the Court of Appeals.

(c) The term 'affected persons' includes: the applicant; the health systems agency for the health service area in which the proposed project is to be located; health systems agencies serving contiguous health service areas or located within the same standard metropolitan statistical area; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health service facilities within that geographic area; health service facilities and health maintenance organizations (HMOs) located in the health service area in which the project is proposed to be located, which provide services similar to the services of the facility under review; health service facilities and HMOs which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; third party payers who reimburse health service facilities for services in the health service area in which the project is proposed to be located; and any agency which establishes rates for health service facilities or HMOs located in the health service area in which the project is proposed to be located."

Sec. 9. G.S. 131E-190 reads as rewritten:

"§ 131E-190. *Enforcement and sanctions.*

(a) Only those new institutional health services which are found by the Department to be needed as provided in this Article and granted certificates of need shall be offered or developed within the State.

(b) No formal commitments made for financing, construction, or acquisition regarding the offering or development of a new institutional health service shall be made by any person unless a certificate of need for such service or activities has been granted.

(c) Nothing in this Article shall be construed as terminating the P.L. 92-603, Section 1122, capital expenditure program or the contract between the State of North Carolina and the United States under that program. The sanctions available under that program and contract, with regard to the determination of whether the amounts attributable to an applicable project or capital expenditure project should be included or excluded in determining payments to the proponent under Titles V, XVIII, and XIX of the Social Security Act, shall remain available to the State.

(d) If any person proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services, the penalty for such violation of this Article and rules hereunder may include the withholding of federal and State funds

under Titles V, XVIII, and XIX of the Social Security Act for reimbursement of capital and operating expenses related to the provision of the new institutional health service.

(e) The ~~Medical Care Commission~~ Department may revoke or suspend the license of any person who proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services.

(f) The Department may assess a civil penalty of not more than twenty thousand dollars (\$20,000) against any person who knowingly offers or develops any new institutional health service within the meaning of this Article without a certificate of need issued under this Article and the rules pertaining thereto, or in violation of the terms or conditions of such a certificate, whenever it determines a violation has occurred and each time the service is provided in violation of this provision. In determining the amount of the penalty the Department shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. A person who is assessed a penalty shall be notified of the penalty by registered or certified mail. The notice shall state the reasons for the penalty. If a person fails to pay a penalty, the Department shall refer the matter to the Attorney General for collection. For the purpose of this subsection, the word "person" shall not include an individual in his capacity as an officer, director, or employee of a person as otherwise defined in this Article.

(g) No agency of the State or any of its political subdivisions may appropriate or grant funds or financially assist in any way a person, applicant, or facility which is or whose project is in violation of this Article.

(h) If any person proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services, the Secretary of Human Resources or any person aggrieved, as defined by G.S. 150B-2(6), may bring a civil action for injunctive relief, temporary or permanent, against the person offering, developing or operating any new institutional health service. The action may be brought in the superior court of any county in which the health service facility is located or in the superior court of Wake County.

(i) If the Department determines that the recipient of a certificate of need, or its successor, is operating a service which materially differs from the representations made in its application for that certificate of need, the Department may bring an action in Wake County Superior Court or the superior court of any county in which the certificate of need is to be utilized for injunctive relief, temporary or permanent, requiring the recipient, or its successor, to materially comply with the representations in its application. The Department may also bring an

action in Wake County Superior Court or the superior court of any county in which the certificate of need is to be utilized to enforce the provisions of this subsection and G.S. 131E-181(b) and the rules adopted in accordance with this subsection and G.S. 131E-181(b)."

Sec. 10. This act is effective upon ratification and applies to applications for certificates of need submitted on or after the date of ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

S.B. 935

CHAPTER 693

AN ACT TO INCREASE THE MARRIAGE LICENSE FEE AND
TO CREATE THE DOMESTIC VIOLENCE CENTER FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-10(a) reads as rewritten:

"(a) Except as provided in ~~G.S. 130-40~~ or G.S. ~~161-11.1, 161-11.1 or 161-11.2,~~ all fees collected under this section shall be deposited into the county general fund. In the performance of his duties, the register of deeds shall collect the following fees which shall be uniform throughout the State:

- (1) Instruments in General. -- For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be five dollars (\$5.00) for the first page, which page shall not exceed 8 1/2 inches by 14 inches, plus two dollars (\$2.00), for each additional page or fraction thereof. A page exceeding 8 1/2 inches by 14 inches shall be considered two pages.

When a document is presented for registration that consists of multiple instruments, the fee shall be ten dollars (\$10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

- (2) Marriage Licenses. -- For issuing a license -- ~~twenty~~ forty dollars ~~(\$20.00); (\$40.00);~~ for issuing a delayed certificate with one certified copy -- five dollars (\$5.00); and for a proceeding for correction of names in application, license or certificate, with one certified copy -- five dollars (\$5.00).

- (3) Plats. -- For each original or revised plat recorded -- nineteen dollars (\$19.00); for furnishing a certified copy of a plat -- three dollars (\$3.00).
- (4) Right-of-Way Plans. -- For each original or amended plan and profile sheet recorded -- five dollars (\$5.00). This fee is to be collected from the Board of Transportation.
- (5) Registration of Birth Certificate One Year or More after Birth. -- For preparation of necessary papers when birth to be registered in another county -- five dollars (\$5.00); for registration when necessary papers prepared in another county, with one certified copy -- five dollars (\$5.00); for preparation of necessary papers and registration in the same county, with one certified copy -- ten dollars (\$10.00).
- (6) Amendment of Birth or Death Record. -- For preparation of amendment and affecting correction -- two dollars (\$2.00).
- (7) Legitimations. -- For preparation of all documents concerned with legitimations -- seven dollars (\$7.00).
- (8) Certified Copies of Birth and Death Certificates and Marriage Licenses. -- For furnishing a certified copy of a death or birth certificate or marriage license -- three dollars (\$3.00). Provided however, a Register of Deeds may issue without charge a certified Birth Certificate to any person over the age of 62 years.
- (9) Certified Copies. -- For furnishing a certified copy of an instrument for which no other provision is made by this section -- three dollars (\$3.00) for the first page, plus one dollar (\$1.00) for each additional page or fraction thereof.
- (10) Comparing Copy for Certification. -- For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof -- two dollars (\$2.00).
- (11) Uncertified Copies. -- When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, or index pages, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying and/or computer equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be prominently posted in his office.
- (12) Acknowledgment. -- For taking an acknowledgment, oath, or affirmation or for the performance of any notarial act -- one dollar (\$1.00). This fee shall not be charged if the act

is performed as a part of one of the services for which a fee is provided by this subsection: except that this fee shall be charged in addition to the fees for registering, filing or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

- (13) Uniform Commercial Code. -- Such fees as are provided for in Chapter 25, Article 9, Part 4, of the General Statutes.
- (14) Torrens Registration. -- Such fees as are provided in G.S. 43-5.
- (15) Master Forms. -- Such fees as are provided for instruments in general.
- (16) Probate. -- For certification of instruments for registration as provided in G.S. 47-14 -- one dollar (\$1.00).
- (17) Qualification of Notary Public. -- For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10-2 -- five dollars (\$5.00).
- (18) Reinstatement of Articles of Incorporation. -- For filing reinstatements of Articles of Incorporation prepared pursuant to G.S. 105-232; such fees as provided for instruments in general. The fee shall be paid by the corporation affected."

Sec. 2. Article 1 of Chapter 161 is amended by adding a new section to read:

" § 161-11.2. Fees for domestic violence centers.

Twenty dollars (\$20.00) of each fee collected by a register of deeds for issuance of a marriage license pursuant to G.S. 161-10(a)(2) shall be forwarded by the register of deeds to the county finance officer, who shall forward the funds to the Department of Administration to be credited to the Domestic Violence Center Fund established under G.S. 50B-9. The register of deeds shall forward the fees to the county finance officer as soon as practical. The county finance officer shall forward the fees to the Department of Administration within 60 days after receiving the fees. The Register of Deeds shall inform the applicants that twenty dollars (\$20.00) of the fee for a marriage license shall be used for Domestic Violence programs."

Sec. 3. Chapter 50B of the General Statutes is amended by adding a new section to read:

" § 50B-9. Domestic Violence Center Fund.

The Domestic Violence Center Fund is established within the State Treasury. The fund shall be administered by the Department of Administration, North Carolina Council for Women, and shall be used to make grants to centers for victims of domestic violence and to

The North Carolina Coalition Against Domestic Violence, Inc. This fund shall be administered in accordance with the provisions of the Executive Budget Act. The Department of Administration shall make quarterly grants to each eligible domestic violence center and to The North Carolina Coalition Against Domestic Violence, Inc. Each grant recipient shall receive the same amount. To be eligible to receive funds under this section, a domestic violence center must meet the following requirements:

- (1) It shall have been in operation on the preceding July 1 and shall continue to be in operation.
- (2) It shall offer all of the following services: a hotline, transportation services, community education programs, daytime services, and call forwarding during the night and it shall fulfill other criteria established by the Department of Administration.
- (3) It must be a nonprofit corporation."

Sec. 4. This act becomes effective August 1, 1991, and applies to marriage licenses issued on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

H.B. 14

CHAPTER 694

AN ACT TO REVISE THE OPEN MEETINGS LAW TO ENHANCE OPEN GOVERNMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-318.10(a) reads as rewritten:

"(a) Except as provided in G.S. 143-318.11, G.S. 143-318.14A, G.S. 143-318.15, and G.S. 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting."

Sec. 2. G.S. 143-318.10 is amended by adding a subsection to read:

"(e) Every public body shall keep full and accurate minutes of all official meetings, excluding any executive sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. Such minutes shall be public records within the meaning of G.S. 132-6."

Sec. 3. G.S. 143-318.11(a)(5) reads as rewritten:

"(5) To consult with an ~~attorney~~, attorney employed or retained to represent the public body, to the extent that confidentiality is required in order ~~for the attorney to exercise his ethical duties as a~~

lawyer, to preserve the attorney-client privilege between the attorney and the public body."

Sec. 4. G.S. 143-318.11(b) is repealed.

Sec. 5. G.S. 143-318.12(b)(1) reads as rewritten:

"(1) If a meeting is an adjourned or recessed session of a regular meeting or of some other meeting, notice of which has been given pursuant to this subsection, and public body recesses a regular, special, or emergency meeting held pursuant to public notice given in compliance with this subsection, and the time and place of the adjourned or recessed session has been set during the regular or other meeting, at which the meeting is to be continued is announced in open session, no further notice is necessary, shall be required."

Sec. 6. G.S. 143-318.12(c) is repealed.

Sec. 7. A new section is added to Article 33C of Chapter 143 of the General Statutes to read as follows:

"§ 143-318.14A. Legislative commissions, committees, and standing subcommittees.

(a) Except as provided in subsection (c) below, all official meetings of commissions, committees, and standing subcommittees of the General Assembly (including, without limitation, joint committees and study committees), shall be held in open session. For the purpose of this section, the following also shall be considered to be 'commissions, committees, and standing subcommittees of the General Assembly':

- (1) The Legislative Research Commission;
- (2) The Legislative Services Commission;
- (3) The Advisory Budget Commission;
- (4) The Joint Legislative Utility Review Committee;
- (5) The Joint Legislative Commission on Governmental Operations;
- (6) The Joint Legislative Commission on Municipal Incorporations;
- (7) The Commission on the Family;
- (8) The Joint Select Committee on Low-Level Radioactive Waste;
- (9) The Environmental Review Commission;
- (10) The Joint Legislative Highway Oversight Committee;
- (11) The Joint Legislative Education Oversight Committee;
- (12) The Joint Legislative Commission on Future Strategies for North Carolina;
- (13) The Commission on Children with Special Needs;
- (14) The Legislative Committee on New Licensing Boards;

(15) The Commission on Agriculture, Forestry, and Seafood Awareness;

(16) The North Carolina Study Commission on Aging; and

(17) The standing Committees on Pensions and Retirement.

(b) Reasonable public notice of all meetings of commissions, committees, and standing subcommittees of the General Assembly shall be given. For purposes of this subsection, 'reasonable public notice' includes, but is not limited to:

(1) Notice given openly at a session of the Senate or of the House; or

(2) Notice posted on the press room door of the State Legislative Building in Raleigh and delivered to the Legislative Services Office.

G.S. 143-318.12 shall not apply to meetings of commissions, committees, and standing subcommittees of the General Assembly.

(c) A commission, committee, or standing subcommittee of the General Assembly may take final action only in an open meeting.

(d) A violation of this section by members of the General Assembly shall be punishable as prescribed by the rules of the House or the Senate.

(e) The following sections shall apply to meetings of commissions, committees, and standing subcommittees of the General Assembly: G.S. 143-318.10(e) and G.S. 143-318.11, G.S. 143-318.13 and G.S. 143-318.14, G.S. 143-318.16 through G.S. 143-318.17."

Sec. 8. G.S. 143-318.16A is amended by adding a subsection to read:

"(e) The validity of any enacted law or joint resolution or passed simple resolution of either house of the General Assembly is not affected by this Article."

Sec. 9. G.S. 143-318.18 reads as rewritten:

"§ 143-318.18. Exceptions.

This Article does not apply to:

(1) Grand and petit juries.

(2) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.

(3) The Judicial Standards Commission.

(4) ~~The Legislative Services Commission.~~

(4a) The Legislative Ethics Committee.

(4b) A conference committee of the General Assembly.

(4c) A caucus by members of the General Assembly; however, no member of the General Assembly shall participate in a caucus which is called for the purpose of evading or subverting this Article.

- (5) Law enforcement agencies.
- (6) A public body authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or certificates, (i) while preparing, approving, administering, or grading examinations or (ii) while meeting with respect to an individual applicant for or holder of such a license or certificate. This exception does not amend, repeal, or ~~supercede~~ supersede any other statute that requires a public hearing or other practice and procedure in a proceeding before such a public body.
- (7) Any public body subject to the Executive Budget Act (G.S. 143-1 *et seq.*) and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.
- (8) The boards of trustees of endowment funds authorized by G.S. 116-36 or G.S. 116-238.
- ~~(9) The Council of State.~~
- (10) The Board of Awards.
- (11) The General Court of Justice."

Sec. 10. This act becomes effective September 1, 1991.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

H.B. 611

CHAPTER 695

AN ACT TO REQUIRE THAT ANY REDISTRICTING BY THE ALEXANDER COUNTY BOARD OF EDUCATION BE BY A TWO-THIRDS VOTE AND TO PROVIDE AN EFFECTIVE DATE FOR COTERMINOUS LINES IN THE GUILFORD COUNTY SCHOOL MERGER REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-37(k), as enacted by Section 1 of Chapter 253 of the 1991 Session Laws, reads as rewritten:

"(k) Any action taken under subsections (i) or (j) of this section is effective only if approved by vote of all two-thirds of the members of the board of education in office at the time of the vote."

Sec. 2. Section 1 applies only to the Alexander County Board of Education.

Sec. 3. Chapter 78 of the 1991 Session Laws is amended by adding the following new section:

"Sec. 23.1. If this part becomes effective as provided by Section 28 of this act, it shall become effective for the school year beginning after June 30, 1992."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

H.B. 776

CHAPTER 696

AN ACT TO PROVIDE THAT SIX MEMBERS OF THE WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION SHALL BE ELECTED FROM DISTRICTS. AND THREE SHALL BE ELECTED AT LARGE.

The General Assembly of North Carolina enacts:

Section 1. Section 2(a)(5)(ii) of Chapter 112, Session Laws of 1961, as rewritten by Chapter 466, Session Laws of 1985, reads as rewritten:

"(ii) Effective on the first Monday in December 1986, the Winston-Salem/Forsyth County Board of Education shall be composed of nine members. In the ~~1986~~ 1994 election and quadrennially thereafter, ~~five~~ nine persons shall be elected to the Winston-Salem/Forsyth County Board of Education for four-year terms. In the ~~1988~~ 1992 election ~~and quadrennially thereafter~~, four persons shall be elected to the Winston-Salem/Forsyth County Board of Education for ~~four-year~~ two-year terms. Persons shall be elected to those seats as follows:

- (1) In 1992 two persons shall be elected each from Districts 1 and 2.
- (2) In 1994 and quadrennially thereafter, two persons shall be elected from District 1, four persons shall be elected from District 2, and three persons shall be elected at large from all of Forsyth County.

For the district seats, only residents of the district shall be eligible to be candidates and only qualified voters of the district shall be eligible to vote.

The districts as established for the purpose of this subparagraph are as follows:

District 1: Forsyth County: Broadbay #1 *, Middlefork #2 *, Middlefork #3 *, Ashley Middle School *, Brown/Douglas Recreation *, Brunson Elementary School *, Carver High School *, East Winston Library *, Easton Elementary School *, Forest Hill Fire Station *, Forest Pk. Elementary School *, 14th Street Recreation Center *, Hanes Community Center *, Happy Hill Recreation Center

*, Hill Middle School *, Kennedy Middle School *, Lowrance Middle School *, M. L. King Recreation Center *, Memorial Coliseum *, Mineral Springs F. St *, Mt. Sinai Church *, New Hope United Methodist Church *, Old Town Presbyterian Church *, St. Andrews United Methodist *, Trinity Moravian Church *, Winston Lake Family YMCA *.

District 2: Forsyth County: Abbotts Creek #1 *, Abbotts Creek #2 *, Abbotts Creek #3 *, Belews Creek *, Bethania #1 *, Bethania #2 *, Bethania #3 *, Broadbay #2 *, Clemmonsville #1 *, Clemmonsville #2 *, Clemmonsville #3 *, Kernersville #1 *, Kernersville #2 *, Kernersville #3 *, Kernersville #4 *, Lewisville #1 *, Lewisville #2 *, Lewisville #3 *, Old Richmond *, Old Town #2 *, Old Town #3 *, Salem Chapel #1 *, Salem Chapel #2 *, South Fork #2 *, South Fork #3 *, Vienna #1 *, Vienna #2 *, Vienna #3 *, Ardmore Baptist Church *, Bethabara Moravian Church *, Bible Wesleyan Church *, Bishop McGuinness *, Bolton Swimming Center *, Calvary Baptist Church *, Christ Moravian Church *, Country Club Fire St. *, Covenant Presbyterian Church *, First Christian Church *, Forsyth Tech W. Camp. *, Greek Orthodox Church *, Jefferson Elementary School *, Latham Elementary School *, Messiah Moravian Church *, Miller Park Recreation Center *, Mt. Tabor High School *, Parkland High School *, Parkway United Church *, Philo Middle School *, Polo Park Recreation Center *, Reynolds High School Gym *, Sherwood Forest Elementary School *, South Fork Elem School *, St. Anne's Episcopal Church *, Summit School *, Trinity United Methodist Church *, Whitaker Elementary School *.

District boundaries shall be as reported by the United States Bureau of the Census under Public Law 94-171 for the 1990 census, under the IVTD version of the TIGER files."

Sec. 2. The last sentence of Section 2(a)(5)(iii) of Chapter 112, Session Laws of 1961, as amended by Chapter 466, Session Laws of 1985, reads as rewritten:

"For:

- (1) At-large seats, three ~~The four or five~~ candidates of each party, depending on the number of persons being elected in a given year, who receive the highest number of votes shall be declared the nominees of their party, party in accordance with law; and
- (2) Each district seat, the candidates of each party shall be declared the nominees of their party in accordance with law
and there shall be no second primary election."

Sec. 3. This act does not affect the terms of office of persons serving on the Winston-Salem/Forsyth County Board of Education for terms to expire in 1992 or 1994.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

H.B. 850

CHAPTER 697

AN ACT TO REQUIRE THE DEPARTMENT OF SECRETARY OF STATE TO ADOPT RULES SPECIFYING MINIMUM INDEXING STANDARDS IN LAND RECORDS MANAGEMENT AND TO REQUIRE REGISTER OF DEEDS OFFICES TO COMPLY WITH THOSE INDEXING STANDARDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-345.6 is amended by adding a new subsection to read:

"(b1) The Department of Secretary of State, in cooperation with the North Carolina Association of Registers of Deeds, Inc., and the Real Property Section of the North Carolina Bar Association, shall adopt, pursuant to Chapter 150B of the General Statutes, rules specifying the minimum indexing standards established pursuant to subsection (b) of this section and procedures for complying with those minimum standards in land records management. A copy of the standards adopted shall be posted in the office of the register of deeds in each county of the State."

Sec. 2. Article 2 of Chapter 161 of the General Statutes is amended by adding a new section to read:

"§ 161-22.3. Minimum standards for land records management."

In addition to the recording and indexing procedures set forth in this Article, the register of deeds shall follow the rules specifying minimum standards and procedures in land records management adopted by the Department of Secretary of State pursuant to G.S. 143-345.6(b1)."

Sec. 3. Section 2 of this act becomes effective July 1, 1993. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

H.B. 985

CHAPTER 698

AN ACT TO CLARIFY A CITY'S AUTHORITY TO REQUIRE PARTICIPATION IN ANY SOLID WASTE COLLECTION SERVICES PROVIDED BY THE CITY AND TO AUTHORIZE

THE CITY OF STATESVILLE TO EXEMPT CERTAIN PROPERTY FROM ASSESSMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-192 is repealed.

Sec. 2. G.S. 160A-317 reads as rewritten:

" § 160A-317. Power to require ~~connections~~, connections to water or sewer service and the use of solid waste collection services.

(a) Connections. -- A city may require ~~the owners~~ an owner of improved property located within the city limits and upon or within a reasonable distance of any water line or sewer collection line owned or leased and operated by the city to connect ~~his~~ the owner's premises with the water or sewer line or both, and may fix charges for the connections. In lieu of requiring connection under this ~~section~~ subsection and in order to avoid hardship, the city may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties ~~which~~ that are connected.

(b) Solid Waste. -- A city may require an owner of improved property to do any of the following:

- (1) Place solid waste in specified places or receptacles for the convenience of city collection and disposal.
- (2) Separate materials from solid waste before the solid waste is collected.
- (3) Participate in a recycling program approved by the Council.
- (4) Participate in any solid waste collection service provided by the city or by a person who has a contract with the city if the owner or occupant of the property has not otherwise contracted for the collection of solid waste from the property.

A city may impose a fee for the solid waste collection service provided under subdivision (4). The fee may not exceed the costs of collection."

Sec. 3. The City of Statesville may exempt from special assessments levied under Article 10 of Chapter 160A of the General Statutes for the construction of water lines, any property within the area annexed by the City of Statesville by Ordinance No. 22-90 adopted May 21, 1990, if the property, on the effective date of the annexation ordinance (June 30, 1990), was situated adjacent to the water lines of the Iredell Water Corporation, Piedmont Water Corporation, or to existing water lines of the City of Statesville.

Sec. 4. Section 3 of this act applies to the City of Statesville only.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

H.B. 1010

CHAPTER 699

AN ACT TO LICENSE WHOLESALE DRUG DISTRIBUTORS.

Whereas, the Congress of the United States passed Public Law 100-293, the Prescription Drug Marketing Act of 1987, part of which will prohibit wholesale drug distributors from distributing prescription drugs in interstate commerce after September 14, 1992, in a state unless that person is licensed by the state; and

Whereas, the State licensing program must meet certain guidelines established by the United States Secretary of Health and Human Services (21 C.F.R. Part 205); and

Whereas, if the State fails to enact a licensing program that meets these federal guidelines, it will be a violation of federal law to engage in the wholesale distribution of prescription drugs in interstate commerce in North Carolina; and

Whereas, there is no provision for federal licensing if the State fails to act; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Title. This act shall be known as the "Wholesale Drug Distributor Licensing Act of 1991."

Sec. 2. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12A.

"Wholesale Prescription Drug Distributors.

"§ 106-145.1. Purpose and interpretation of Article.

This Article establishes a State licensing program for wholesale distributors to enable wholesale distributors to comply with federal law. This Article shall be construed to do only that required for compliance with 21 U.S.C. § 353(e) and 21 C.F.R. Part 205. This Article shall be interpreted to be consistent with 21 C.F.R. Part 205, Guidelines for State Licensing of Wholesale Prescription Drug Distributors. In the event of a conflict, the federal law controls.

"§ 106-145.2. Definitions.

The following definitions apply in this Article:

- (1) Blood. -- Whole blood collected from a single donor and processed either for transfusion or further manufacturing.
- (2) Blood component. -- That part of blood separated by physical or mechanical means.
- (3) Commissioner. -- The Commissioner of Agriculture.
- (4) Common control. -- The power to direct or cause the direction of the management and policies of a person,

- whether by ownership of stock, by voting rights, by contract, or otherwise.
- (5) Department. -- The Department of Agriculture.
- (6) Drug sample. -- A unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.
- (7) Manufacturer. -- A person who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling a prescription drug.
- (8) Person. -- An individual, a corporation, a partnership, or any other entity.
- (9) Prescription drug. -- A human drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to 21 U.S.C. § 353(b).
- (10) Wholesale distribution. -- Distribution of a prescription drug to a person who is not a consumer or patient, other than any of the following types of distributions:
- a. Intracompany sales. An intracompany sale is a transaction or transfer between any divisions, subsidiary and parent companies, or affiliated companies under common control of the same corporate entity.
 - b. The purchase or other acquisition of a prescription drug by a hospital or other health care entity that is a member of a group purchasing organization for its own use from the group purchasing organization or from other hospitals or other health care entities that are members of these organizations.
 - c. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code to a nonprofit affiliate of the organization to the extent otherwise permitted by law.
 - d. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities that are under common control.
 - e. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug for emergency medical reasons. Emergency medical reasons include transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a

temporary shortage when the gross dollar value of the transfers does not exceed five percent (5%) of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any 12-consecutive-month period.

- f. The sale, purchase, or trade of a prescription drug; an offer to sell, purchase, or trade a prescription drug; or the dispensing of a prescription drug pursuant to a prescription.
- g. The distribution of drug samples by a representative of a manufacturer or a wholesale distributor.
- h. The sale, purchase, or trade of blood and blood components intended for transfusion.

- (11) Wholesale distributor. -- A person who is engaged in the wholesale distribution of prescription drugs. The term includes manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions. The term does not include a person who acquires prescription drugs comingled with other goods as part of a recovery operation and who disposes of such drugs under the supervision of the Department. A warehouse includes a warehouse of a manufacturer or wholesale distributor, a chain drug warehouse, and a wholesale drug warehouse.

" § 106-145.3. Wholesale distributor must have license.

(a) Requirement. -- Every wholesale distributor engaged in the wholesale distribution of prescription drugs in interstate commerce in this State shall obtain a license from the Commissioner for each location from which prescription drugs are distributed and shall renew each license annually. A license may cover multiple buildings and multiple operations at a single location, at the wholesale distributor's discretion. A license expires on December 31 of the year in which it is issued. A wholesale distributor licensed under this section is not required to register under G.S. 106-140.1. In lieu of licensing under this section, a wholesale distributor who has no facilities in this State may register under G.S. 106-140.1 if the wholesale distributor possesses a valid license granted by another state that has requirements substantially similar to this Article.

(b) Reciprocity. -- The Commissioner may license an out-of-State wholesale distributor on the basis of reciprocity with another state when the following conditions apply:

- (1) The out-of-State wholesale distributor possesses a valid license granted by another state pursuant to requirements

substantially equivalent to the license requirements of this State.

- (2) The other state extends reciprocal treatment under its own laws to wholesale distributors licensed in this State.

" § 106-145.4. Application and fee for license.

(a) Application. -- An application for a wholesale distributor license or for renewal of a wholesale distributor license shall be on a form prescribed by the Commissioner and shall include the following information:

- (1) The name, full business address, and telephone number of the applicant.
- (2) All trade or business names used by the applicant.
- (3) Addresses, telephone numbers, and names of contact persons for all facilities used by the applicant for the storage, handling, and distribution of prescription drugs.
- (4) The type of ownership or operation of the applicant, such as a partnership, a corporation, or a sole proprietorship.
- (5) The name of each owner and operator of the applicant, including:
 - a. If the applicant is an individual, the individual's name.
 - b. If the applicant is a partnership, the name of each partner and the name of the partnership.
 - c. If the applicant is a corporation, the name and title of each corporate officer and director, the corporate name of the corporation, and the state of incorporation.
 - d. If the applicant is a sole proprietorship, the full name of the sole proprietor and the name of the business entity.
- (6) Any other information required by the Commissioner to determine if the applicant is qualified to receive a license.

When a change occurs in any information listed in this subsection after a license is issued, the license holder shall report the change to the Commissioner within 90 days after the change.

(b) Fee. -- An application for an initial license or a renewed license as a wholesale distributor shall be accompanied by a nonrefundable fee of five hundred dollars (\$500.00) for a manufacturer or three hundred fifty dollars (\$350.00) for any other person.

" § 106-145.5. Review of application and qualifications of applicant.

The Commissioner shall determine whether to issue or deny a wholesale distributor license within 90 days after an applicant files an application for a license with the Commissioner. In reviewing an application, the Commissioner shall consider the factors listed in this subsection. In the case of a partnership or corporation, the

Commissioner shall consider the factors as applied to each individual whose name is required to be included in the license application.

The factors to be considered are:

- (1) Any convictions of the applicant under any federal, state, or local law relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances.
- (2) Any felony convictions of the applicant under federal, state, or local law.
- (3) The applicant's past experience in the manufacture or distribution of controlled substances and other prescription drugs.
- (4) Whether the applicant has previously given any false or fraudulent information in an application made in connection with drug manufacturing or distribution.
- (5) Suspension or revocation by the federal government or a state or local government of any license currently or previously held by the applicant for the manufacture or distribution of any controlled substances or other prescription drugs.
- (6) Compliance with the licensing requirements under any previously granted license.
- (7) Compliance with the requirements to maintain or make available to the Commissioner or to a federal, state, or local law enforcement official those records required under G.S. 106-145.8.
- (8) Whether the applicant requires employees of the applicant who are involved in any prescription drug wholesale distribution activity to have education, training, experience, or any combination of these factors sufficient to enable the employee to perform assigned functions in a manner that ensures that prescription drug quality, safety, and security will be maintained at all times as required by law.
- (9) Any other factors or qualifications the Commissioner considers relevant to and consistent with the public health and safety.

The Commissioner shall inspect the facility of an applicant at which prescription drugs will be stored, handled, or distributed before issuing the applicant a license.

" § 106-145.6. Denial, revocation, and suspension of license; penalties for violations.

(a) Adverse Action. -- The Commissioner may deny a license to an applicant if the Commissioner determines that granting the applicant a license would not be in the public interest. Public interest considerations shall be limited to factors and qualifications that are

directly related to the protection of public health and safety. The Commissioner may deny, suspend, or revoke a license for substantial or repeated violations of this Article or for conviction of a violation of any other federal, state, or local prescription drug law or regulation. Chapter 150B of the General Statutes governs the denial, suspension, or revocation of a license under this Article.

(b) Criminal Sanctions. -- It is unlawful to engage in wholesale distribution in this State without a wholesale distributor license or to violate any other provision of this Article. A person who violates this Article commits a Class H felony and is punishable in accordance with G.S. 14-1.1. A fine imposed for a violation of this Article may not exceed two hundred fifty thousand dollars (\$250,000).

(c) Civil Penalty. -- The Commissioner may assess a civil penalty of not more than ten thousand dollars (\$10,000) against a person who violates any provision of this Article. In determining the amount of a civil penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. Chapter 150B of the General Statutes governs the assessment of a civil penalty under this subsection. If a civil penalty is not paid within 30 days after the completion of judicial review of a final agency decision by the Commissioner, the penalty may be collected in any manner by which a debt may be collected. Penalties collected shall be credited to the General Fund.

" § 106-145.7. Storage, handling, and records of prescription drugs.

(a) Facilities. -- All facilities at which prescription drugs are stored, warehoused, handled, held, offered, marketed, or displayed for wholesale distribution shall meet the following requirements:

- (1) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations.
- (2) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions.
- (3) Have a quarantine area for the storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed secondary containers that have been opened.
- (4) Be maintained in a clean and orderly condition.
- (5) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(b) Security. -- All facilities used for wholesale distribution shall be secure from unauthorized entry. Access from outside the premises shall be kept to a minimum and be well-controlled. The outside perimeter of the premises shall be well-lighted. Entry into areas where prescription drugs are held shall be limited to authorized personnel. The facilities shall be equipped with the following:

- (1) An alarm system to detect entry after hours.
- (2) A security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(c) Storage. -- All prescription drugs for wholesale distribution shall be stored at appropriate temperatures and under appropriate conditions in accordance with any requirements stated in the labeling of the prescription drugs or with requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF). If the labeling of a prescription drug or a compendium do not establish storage requirements for a prescription drug, the drug may be held at 'controlled' room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(d) Examination of Materials. -- A wholesale distributor shall visually examine each outside shipping container upon receipt for identity and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution. The examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents. A wholesale distributor shall carefully inspect each outgoing shipment for identity of the prescription drugs and to ensure that no prescription drugs that have been damaged in storage or held under improper conditions are delivered.

(e) Returned, Damaged, and Outdated Prescription Drugs. -- A wholesale distributor shall quarantine and physically separate prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated from other prescription drugs until their destruction or their return to their supplier. A prescription drug whose immediate or sealed outer or sealed secondary container has been opened or used shall be identified as having been opened or used and shall be treated in the same manner as outdated prescription drugs.

If the conditions under which a prescription drug has been returned to a wholesale distributor cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be destroyed or returned to its supplier unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, the wholesale distributor shall consider, among other things, the

conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling as a result of storage or shipping.

" § 106-145.8. Records of prescription drugs.

(a) Records. -- A wholesale distributor shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs, including all stored prescription drugs, all incoming and outgoing prescription drugs, and all outdated, damaged, deteriorated, misbranded, or adulterated prescription drugs. A wholesale distributor is not required, however, to keep a record of the lot number or expiration date of a prescription drug disposed of or distributed by the distributor.

A record of a prescription drug shall include all of the following information:

- (1) The source of the prescription drug, including the name and principal address of the seller or transferor and the address of the location from which the drug was shipped.
- (2) The identity and quantity of the prescription drug received and distributed or disposed of through another method.
- (3) The date the wholesale distributor received the prescription drug and the date the wholesale distributor distributed or otherwise disposed of the drug.
- (4) Documentation of the proper storage of prescription drugs. Documentation may be by manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs.

A wholesale distributor shall keep a record of a prescription drug for two years after its disposition.

(b) Inspection. -- A wholesale distributor shall make inventories and records of prescription drugs available for inspection and photocopying by representatives of the Department or authorized federal, State, or local law enforcement officials. A wholesale drug distributor shall permit the Department or an authorized federal, State, or local law enforcement official to enter and inspect the distributor's premises and delivery vehicles and to audit the distributor's records and written operating procedures at reasonable times and in a reasonable manner.

A record that is kept at the inspection site or is immediately retrievable by computer or other electronic means shall be readily available for authorized inspection during the two-year retention period. A record kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized official of a federal, State, or local law enforcement agency.

" § 106-145.9. Written procedures concerning prescription drugs and lists of responsible persons.

(a) Procedures. -- A wholesale distributor shall establish, maintain, and adhere to written procedures for the receipt, security, storage, inventory, and distribution of prescription drugs. These shall include all of the following:

- (1) A procedure for identifying, recording, and reporting a loss or theft of a prescription drug.
- (2) A procedure for correcting all errors and inaccuracies in inventories of prescription drugs.
- (3) A procedure whereby the oldest approved stock of a prescription drug is distributed first. The procedure may permit deviation from this requirement, if the deviation is temporary and appropriate.
- (4) A procedure for handling recalls and withdrawals of prescription drugs that adequately addresses recalls and withdrawals due to any of the following:
 - a. An action initiated at the request of the Food and Drug Administration or other federal, State, or local law enforcement or other governmental agency, including the Department.
 - b. Any voluntary action by the manufacturer to remove defective or potentially defective prescription drugs from the market.
 - c. Any action undertaken to promote public health and safety by replacing existing prescription drugs with an improved product or new package design.
- (5) A procedure to ensure that the wholesale distributor prepares for, protects against, and handles any crisis that affects security or operation of any facility in the event of a strike, a fire, flood, or other natural disaster, or another emergency.
- (6) A procedure to ensure that any outdated prescription drugs are segregated from other prescription drugs and either returned to the manufacturer or destroyed.

(b) Responsible Persons. -- A wholesale distributor shall establish and maintain lists of officers, directors, managers, and other persons in charge of the distribution, storage, or handling of prescription drugs. The lists shall include a description of the duties of those on the list and a summary of their qualifications.

" § 106-145.10. Application of other laws.

A wholesale drug distributor shall comply with applicable federal, State, and local laws and regulations. A wholesale distributor that deals in controlled substances shall register with the federal Drug

Enforcement Administration (DEA) and shall comply with all applicable federal, State, and local laws and regulations. A wholesale drug distributor is subject to any applicable federal, State, or local laws or regulations that relate to prescription drug salvaging or reprocessing.

" § 106-145.11. Wholesale Distributor Advisory Committee.

(a) Organization. -- The Wholesale Distributor Advisory Committee is created in the Department. The Committee shall consist of five members appointed by the Commissioner as follows:

- (1) Two members shall be representatives of wholesale distributors.
- (2) One member shall be a representative of a manufacturer.
- (3) One member shall be a representative of practicing pharmacists.
- (4) One member shall be a representative of the consuming public not included in the three categories above.

The Committee shall elect a chair and other officers it finds necessary. The committee shall meet at the call of the chair or upon written notice to all Committee members signed by at least three members. A majority of the Committee is a quorum for the purpose of conducting business. The Department shall provide administrative and clerical support services to the Committee. Members shall be entitled to per diem and reimbursement of expenses as provided in Chapter 138 of the General Statutes.

(b) Duties. -- The Committee shall do the following:

- (1) Review all rules to implement this Article that are proposed for adoption by the Commissioner.
- (2) Advise the Commissioner on the implementation and enforcement of this Article.

" § 106-145.12. Enforcement and implementation of Article.

The Commissioner shall enforce this Article by using employees of the Department. The Commissioner may enter into agreements with federal, State, or local agencies to facilitate enforcement of this Article. The Commissioner may adopt rules to implement this Article."

Sec. 3. G.S. 106-140.1(h) reads as rewritten:

"(h) The Commissioner shall ~~issue regulations~~ adopt rules to implement the registration requirements of this section. These ~~regulations~~ rules may provide for an annual registration fee of up to ~~one hundred dollars (\$100.00)~~ five hundred dollars (\$500.00) for companies operating as manufacturers, wholesalers, or repackagers. The Department of Agriculture shall use these funds for the implementation of the North Carolina Food, Drug and Cosmetic Act."

Sec. 4. G.S. 106-140.1(f) reads as rewritten:

"(f) ~~The foregoing subsections of this section shall not apply; The following classes of people are exempt from the registration requirements of this section:~~

- (1) ~~To pharmacists~~ Pharmacists as defined in G.S. 90-85.3(q) holding a valid permit as defined in ~~G.S. 90-85.3(m); G.S. 90-85.3(m).~~
- (2) ~~To practitioners~~ Practitioners licensed or registered by law to prescribe or administer drugs and who manufacture, prepare, compound, or process drugs or devices solely for use in the course of their professional ~~practice; practice.~~
- (3) ~~To persons~~ Persons who manufacture, prepare, compound, or process drugs solely for use in research, teaching, or chemical analysis and not for ~~sale; or sale.~~
- (4) ~~To such other~~ Other classes of persons as the Commissioner may by ~~regulation rule~~ exempt from the application of this section upon a finding that registration by these classes of persons in accordance with this section is not necessary for the protection of the public health.
- (5) Wholesale distributors of prescription drugs licensed under G.S. 106-145.3."

Sec. 5. This act becomes effective January 1, 1992. Notwithstanding G.S. 106-145.4, the Commissioner may issue a wholesale distributor license to an applicant who had a facility in this State on July 1, 1991, without inspecting the facility.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

H.B. 1106

CHAPTER 700

AN ACT TO EXPAND THE JURISDICTION OF THE LEGISLATIVE ETHICS COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-102 reads as rewritten:

"§ 120-102. *Powers and duties of Committee.*

In addition to the other powers and duties specified in this Article, the Committee has the following powers and duties:

- (1) To prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.
- (2) To receive and file any information voluntarily supplied that exceeds the requirements of this Article.

- (3) To organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.
- (4) To preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.
- (5) To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.
- (6) To advise General Assembly ~~committees, at the request of a committee chairman, or at the request of three members of a committee, about members or~~ render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of committee members in the consideration of specific bills or groups of bills, members upon ethical points raised.
- (7) To ~~suggest to legislators activities which should be avoided,~~ propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.
- (8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, to investigate and dispose of the matter according to the terms of this Article."

Sec. 2. G.S. 120-103 reads as rewritten:

"§ 120-103. *Possible violations; procedures; disposition.*

(a) Institution of Proceedings. -- On its own motion, or in response to signed and sworn complaint of any individual filed with the Committee, the Committee shall inquire into any alleged ~~violation of any provision of this Article.~~ violation:

- (1) Of any provision of this Article, or of the rules adopted in accordance with G.S. 120-102(7); or
- (2) Of the criminal law by a legislator while acting in his official capacity as a participant in the lawmaking process.

(a1) Complaint. --

- (1) A complaint filed under this Article shall state the nature of the violation, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the

knowledge of the individual verifying the complaint or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

- (2) Any individual who verifies a complaint knowing the allegations in the complaint to be untrue may be prosecuted for perjury under G.S. 14-209.

(b) Notice and Hearing. -- If, after such preliminary investigation as it may make, the Committee determines to proceed with an inquiry into the conduct of any individual, the Committee shall notify the individual as to the fact of the inquiry and the charges against him and shall schedule one or more hearings on the matter. The individual shall have the right to present evidence, cross-examine witnesses, and be represented by counsel at any hearings. The Committee may, in its discretion, hold hearings in closed session; however, the individual whose conduct is under inquiry may, by written demand filed with the Committee, require that all hearings before the Committee concerning him be public or in closed session.

(c) Subpoenas. -- The Committee may issue subpoenas to compel the attendance of witnesses or the production of documents, books or other records. The Committee may apply to the superior court to compel obedience to the subpoenas of the Committee. Notwithstanding any other provision of law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties.

~~(d) Disposition of Cases. -- When the Committee has concluded its inquiries into alleged violations, the Committee may dispose of the matter in one or more of the following ways:~~

- ~~(1) The Committee may dismiss the complaint and take no further action. In such case the Committee shall retain its records and findings in confidence unless the individual under inquiry requests in writing that the records and findings be made public.~~
- ~~(2) The Committee may, if it finds substantial evidence that a criminal statute has been violated, refer the matter to the Attorney General for possible prosecution through appropriate channels.~~
- ~~(3) The Committee may refer the matter to the appropriate House of the General Assembly for appropriate action. That House may, if it finds the member guilty of unethical conduct as defined in this Article, censure, suspend or expel the member.~~

(d1) Disposition of Cases. --

- (1) After the Committee has concluded its inquiries into the alleged violations, the Committee shall:
 - a. Dismiss the complaint.
 - b. Issue a public or private admonishment to the legislator, or
 - c. Refer the matter:
 1. To the Attorney General for possible prosecution through appropriate channels or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute; or
 2. To the appropriate house for appropriate action, which shall include censure and expulsion, if the Committee finds substantial evidence of unethical activities.
- (2) If the Committee issues an admonishment as provided in subdivision (1)b. above, the legislator so affected may upon written request to the Committee have the matter referred as provided under subdivision (1)c.2. above.
- (3) In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the individual under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment then the Committee may make public the earlier admonishment and the records and findings related to it.
- (4) Any action by the Committee under this Article does not limit the right of each house of the General Assembly to discipline or to expel its members."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

H.B. 408

CHAPTER 701

AN ACT TO AMEND THE CERTIFICATE OF NEED LAW TO IMPROVE THE ABILITY TO PLAN FOR CHEMICAL DEPENDENCY TREATMENT BEDS AND TO MAKE CLEAR THAT THE STATE MEDICAL FACILITIES PLAN LIMITS THE NUMBER OF BEDS OR FACILITIES THAT MAY BE APPROVED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-176(5b) reads as rewritten:

"(5b) 'Chemical dependency treatment beds' means beds that are licensed for detoxification or for the inpatient treatment of chemical dependency. Residential treatment beds for the treatment of chemical dependency or substance abuse are chemical dependency treatment beds ~~but those residential treatment beds that were developed and operated without a certificate of need shall not be counted in the inventory of chemical dependency treatment beds in the State Health Plans prepared by the Department pursuant to G.S. 131E-177(4) after July 1, 1987. The State Health Plans prepared after July 1, 1987, shall also contain no limitation on the proportion of the overall inventory of chemical dependency treatment beds located in any of the types of chemical dependency treatment facilities identified in subdivision (5a), beds.~~"

Sec. 2. G.S. 131E-183(a) reads as rewritten:

"§ 131E-183. *Review criteria.*

(a) The Department shall review all applications utilizing the criteria outlined in this subsection and shall determine if that an application is either consistent with or not in conflict with these criteria ~~and whether~~ before a certificate of need for the proposed project shall be issued.

- (1) The proposed project shall be consistent with applicable policies and projections in the State Medical Facilities Plan, ~~and the State Health Plan,~~ the needs projection of which constitutes a determinative limitation on the number of health service facility beds, dialysis stations, ambulatory surgical facilities, or home health agencies that may be allocated.
- (2) Repealed by Session Laws 1987, c. 511, s. 1.
- (3) The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.
- (3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the applicant shall demonstrate that the needs of the population presently served will be met adequately by the

proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.

- (4) Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.
- (5) Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.
- (6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.
- (7) The applicant shall show evidence of the availability of resources, including health manpower and management personnel, for the provision of the services proposed to be provided. Further, the applicant shall show that the use of these resources for provision of these services will not preclude alternative uses of these resources to fulfill other more important needs identified by the applicable State Health Plan.
- (8) The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.
- (9) An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.
- (10) When applicable, the applicant shall show that the special needs of health maintenance organizations will be fulfilled by the project. Specifically, the applicant shall show that the project accommodates:

- a. The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and
 - b. The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the applicant shall consider only whether the services from these providers:
 1. Would be available under a contract of at least five years' duration;
 2. Would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
 3. Would cost no more than if the services were provided by the HMO; and
 4. Would be available in a manner which is administratively feasible to the HMO.
- (11) Repealed by Session Laws 1987, c. 511, s. 1.
- (12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.
- (13) The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:
- a. The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the

applicant's service area which is medically underserved:

- b. Its past performance in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant;
 - c. That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services; and
 - d. That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.
- (14) The applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, as applicable.
- (15) to (18) Repealed by Session Laws 1987, c. 511, s. 1.
- (18a) The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.
- (19) Repealed by Session Laws 1987, c. 511, s. 1.
- (20) An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.
- (21) Repealed by Session Laws 1987, c. 511, s. 1."

Sec. 3. G.S. 131E-188(a) reads as rewritten:

"(a) After a decision of the Department to issue, deny or withdraw a certificate of need or exemption or to issue a certificate of need pursuant to a settlement agreement with an applicant to the extent permitted by law, any affected person, as defined in subsection (c) of this section, shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the General Statutes. A petition for a contested

case shall be filed within 30 days after the Department makes its decision. When a petition is filed, the Department shall send notification of the petition to the proponent of each application that was reviewed with the application for a certificate of need that is the subject of the petition. Any affected person shall be entitled to intervene in a contested case.

A contested case shall be conducted in accordance with the following timetable:

- (1) An administrative law judge or a hearing officer, as appropriate, shall be assigned within 15 days after a petition is filed.
- (2) The parties shall complete discovery within 90 days after the assignment of the administrative law judge or hearing officer.
- (3) The hearing at which sworn testimony is taken and evidence is presented shall be held within 45 days after the end of the discovery period.
- (4) The administrative law judge or hearing officer shall make his recommended decision within 75 days after the hearing.
- (5) The Department shall make its final decision within 30 days of receiving the recommended decision.

The administrative law judge or hearing officer assigned to a case may extend the deadlines in subdivisions (2) through (4) so long as the administrative law judge or hearing officer makes his recommended decision in the case within 270 days after the petition is filed. The Department may extend the deadline in subdivision (5) for up to 30 days by giving all parties written notice of the extension."

Sec. 4. This act becomes effective October 1, 1991, and applies to applications submitted on and after that date.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 403

CHAPTER 702

AN ACT TO PROVIDE INCREASED SENTENCES FOR CRIMES COMMITTED WITH ETHNIC ANIMOSITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.4(a) reads as rewritten:

"§ 15A-1340.4. *Presumptive punishment for felony other than Class A or Class B felony; prior felony convictions; consideration of aggravating and mitigating factors; written findings.*

(a) If the sentencing judge imposes a prison term on a person convicted of a felony other than a Class A or Class B felony, he may

suspend the sentence and place the convicted felon on probation as provided by Article 82 of this Chapter. If the convicted felon is under 21 years of age at the time of conviction and the sentencing judge elects to impose an active prison term, the judge must either sentence the felon as a committed youthful offender in accordance with Article 3B of Chapter 148 of the General Statutes and subject to the limit on the prison term provided by G.S. 148-49.14, or make a 'no benefit' finding as provided by G.S. 148-49.14 and impose a regular prison term. If the judge imposes a prison term, whether or not the term is suspended, and whether or not he sentences the convicted felon as a committed youthful offender, he must impose the presumptive term provided in this section unless, after consideration of aggravating or mitigating factors, or both, he decides to impose a longer or shorter term, or unless he imposes a prison term pursuant to any plea arrangement as to sentence under Article 58 of this Chapter, or unless when two or more convictions are consolidated for judgment he imposes a prison term (i) that does not exceed the total of the presumptive terms for each felony so consolidated (ii) that does not exceed the maximum term for the most serious felony so consolidated, and (iii) that is not shorter than the presumptive term for the most serious felony so consolidated. In imposing a prison term, the judge, under the procedures provided in G.S. 15A-1334(b), may consider any aggravating and mitigating factors that he finds are proved by the preponderance of the evidence, and that are reasonably related to the purposes of sentencing, whether or not such aggravating or mitigating factors are set forth herein, but unless he imposes the term pursuant to a plea arrangement as to sentence under Article 58 of this Chapter, or unless when two or more convictions are consolidated for judgment he imposes a prison term (i) that does not exceed the total of the presumptive terms for each felony so consolidated, (ii) that does not exceed the maximum term for the most serious felony so consolidated, and (iii) that is not shorter than the presumptive term for the most serious felony so consolidated, he must consider each of the following aggravating and mitigating factors:

(1) Aggravating factors:

- a. The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.
- b. The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- c. The defendant was hired or paid to commit the offense.

- d. The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- e. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant.. while engaged in the performance of his official duties or because of the exercise of his official duties.
- f. The offense was especially heinous, atrocious, or cruel.
- g. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- h. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- i. The defendant was armed with or used a deadly weapon at the time of the crime.
- j. The victim was very young, or very old, or mentally or physically infirm.
- k. The defendant committed the offense while on pretrial release on another felony charge.
- l. The defendant involved a person under the age of 16 in the commission of the crime.
- m. The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
- n. The defendant took advantage of a position of trust or confidence to commit the offense.
- o. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days' confinement. Such convictions include those occurring in North Carolina courts and courts of other states, the District of Columbia, and the United States, provided that any crime for which the defendant was convicted in a jurisdiction other than North Carolina would have been a crime if committed in this State. Such prior convictions do not include any crime that is joinable, under G.S. Chapter 15A, with the crime or crimes for which the defendant is currently being sentenced.

- p. The offense involved the sale or delivery of a controlled substance to a minor.
- q. The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

Evidence necessary to prove an element of the offense may not be used to prove any factor in aggravation, and the same item of evidence may not be used to prove more than one factor in aggravation.

The judge may not consider as an aggravating factor the fact that the defendant exercised his right to a jury trial.

(2) Mitigating factors:

- a. The defendant has not record of criminal convictions or a record consisting solely of misdemeanors punishable by not more than 60 days' imprisonment.
- b. The defendant committed the offense under duress, coercion, threat, or compulsion which was insufficient to constitute a defense but significantly reduced his culpability.
- c. The defendant was a passive participant or played a minor role in the commission of the offense.
- d. The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
- e. The defendant's immaturity or his limited mental capacity at the time of commission of the offense significantly reduced his culpability for the offense.
- f. The defendant has made substantial or full restitution to the victim.
- g. The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
- h. The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
- i. The defendant acted under strong provocation or the relationship between the defendant and the victim was otherwise extenuating.
- j. The defendant could not reasonably foresee that his conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
- k. The defendant reasonably believed that his conduct was legal.

- l. Prior to arrest or at an early state of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- m. The defendant has been a person of good character or has a good reputation in the community in which he lives.
- n. The defendant is a minor and has reliable supervision available.
- o. The defendant has been honorably discharged from the United States armed services."

Sec. 2. G.S. 14-3 reads as rewritten:

" § 14-3. *Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and ~~malice~~ malice, or with deceit and intent to ~~defraud~~ defraud, or with ethnic animosity.*

(a) Except as provided in subsections (b) and (c), ~~subsection (b)~~, every person who shall be convicted of any misdemeanor for which no specific punishment is prescribed by statute shall be punishable by fine, by imprisonment for a term not exceeding two years, or by both, in the discretion of the court.

(b) If a misdemeanor offense as to which no specific punishment is prescribed be infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a Class H felony.

(c) If any misdemeanor offense with punishment less than the punishment for a general misdemeanor is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a general misdemeanor. If any general misdemeanor offense is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class J felony."

Sec. 3. This act becomes effective October 1, 1991, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

S.B. 434

CHAPTER 703

AN ACT TO MAKE CERTAIN TECHNICAL AMENDMENTS TO THE WORKERS' COMPENSATION ACT AND TO INCREASE ASSESSMENTS BY THE INDUSTRIAL COMMISSION FOR THE SECOND INJURY FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-2 is amended by adding a new subdivision to read:

"(19) Medical Compensation. -- The term 'medical compensation' means medical, surgical, hospital, nursing, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, as may reasonably be required to effect a cure or give relief and for such additional time as, in the judgment of the Commission, will tend to lessen the period of disability; and any original artificial members as may reasonably be necessary at the end of the healing period."

Sec. 2. G.S. 97-10.2(f) reads as rewritten:

- "(f) (1) If the employer has filed a written admission of liability for benefits under this Chapter with, or if an award final in nature in favor of the employee has been entered by the Industrial Commission, then any amount obtained by any person by settlement with, judgment against, or otherwise from the third party by reason of such injury or death shall be disbursed by order of the Industrial Commission for the following purposes and in the following order of priority:
- a. First to the payment of actual court costs taxed by judgment.
 - b. Second to the payment of the fee of the attorney representing the person making settlement or obtaining judgment, and except for the fee on the subrogation interest of the employer such fee shall not be subject to the provisions of ~~§ 90 of this Chapter~~ G.S. 97-90, but shall not exceed one third of the amount obtained or recovered of the third party.
 - c. Third to the reimbursement of the employer for all benefits by way of compensation or ~~medical treatment~~ medical compensation expense paid or to be paid by the employer under award of the Industrial Commission.
 - d. Fourth to the payment of any amount remaining to the employee or his personal representative.
- (2) The attorney fee paid under (f)(1) shall be paid by the employee and the employer in direct proportion to the amount each shall receive under (f)(1)c and (f)(1)d hereof and shall be deducted from such payments when distribution is made."

Sec. 3. G.S. 97-25 reads as rewritten:

"§ 97-25. *Medical treatment and supplies.*

~~Medical, surgical, hospital, nursing services, medicines, sick travel, rehabilitation services, and other treatment including medical and surgical supplies as may reasonably be required to effect a cure or give relief and for such additional time as in the judgment of the Commission will tend to lessen the period of disability, and in addition thereto such original artificial members as may be reasonably necessary at the end of the healing period~~ Medical compensation shall be provided by the employer. In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

Sec. 4. G.S. 97-29 reads as rewritten:

"§ 97-29. *Compensation rates for total incapacity.*

Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall pay or cause to be paid, as hereinafter provided, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of his average weekly wages, but not more than the amount established annually to be effective October 1 as provided herein, nor less than thirty dollars (\$30.00) per week.

In cases of total and permanent disability, compensation, including ~~reasonable and necessary nursing services, medicines, sick travel, medical, hospital, and other treatment or care of rehabilitative services~~ medical compensation, shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.

The weekly compensation payment for members of the North Carolina national guard and the North Carolina State guard shall be the maximum amount established annually in accordance with the last paragraph of this section per week as fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars (\$30.00) a week as fixed herein.

An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article.

Notwithstanding any other provision of this Article, ~~beginning August 1, 1975, and on July 1 of each year thereafter, year, a~~ maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured wage in accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its nearest multiple of two dollars (\$2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on and after January 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter ~~effective August 1, 1975,~~ and shall be adjusted July 1 and effective January 1 of each year ~~thereafter~~ as herein provided."

Sec. 5. G.S. 97-59 reads as rewritten:

"§ 97-59. *Employer to pay for treatment.*

~~Medical, surgical, hospital, nursing services, medicine, sick travel, rehabilitation services and other treatment as may reasonably be required to tend to lessen the period of disability or provide needed relief~~ Medical compensation shall be paid by the employer in cases in which awards are made for disability or damage to organs as a result of an occupational disease after bills for same have been approved by the Industrial Commission.

In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary."

Sec. 6. G.S. 97-90(a) reads as rewritten:

"(a) Fees for attorneys and physicians and charges of hospitals for ~~services and charges for nursing services, medicines and sick travel~~ medical compensation under this Article shall be subject to the approval of the Commission; but no physician or hospital or other medical facilities shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the Industrial Commission in connection with the case. Unless otherwise provided by the rules, schedules, or orders of the Commission, a request for a specific prior approval to charge shall be submitted to the Commission for each such fee or charge."

Sec. 7. G.S. 97-19 reads as rewritten:

"§ 97-19. *Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.*

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by ~~the Industrial Commission,~~ a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service less than four employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any such subcontractor, any principal or partner of such subcontractor or any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any such subcontractor, any principal or partner of such subcontractor, or any employee of such subcontractor for compensation or other benefits under this Article. If the subcontractor has no employees and waives in writing his right to coverage under this section, the principal contractor, intermediate contractor, or subcontractor subletting the contract shall not thereafter be held liable for compensation or other

benefits under this Article to said subcontractor. Subcontractors who have no employees are not required to comply with G.S. 97-93. ~~The Industrial Commission, upon demand shall furnish such certificate, and may charge therefor the cost thereof, not to exceed twenty-five cents (25¢).~~

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor."

Sec. 8. G.S. 97-24(b) reads as rewritten:

"(b) If any claim for compensation is hereafter made upon the theory that such claim or the injury upon which said claim is based is within the jurisdiction of the Industrial Commission under the provisions of this Article, and if the Commission, or the ~~Supreme Court~~ appellate courts on appeal, shall adjudge that such claim is not within the Article, the claimant, or if he dies, his personal representative, shall have one year after the rendition of a final judgment in the case within which to commence an action at law."

Sec. 9. G.S. 97-92 is amended by adding a new subsection to read:

"(f) Any bill, report, application, and document of every nature and kind, which is required or permitted by Commission rules to be transmitted to the Commission by electronic media or is recorded among the Commission records on computer disk, optical disk, microfilm, or similar media and which is produced or reproduced in written form in the normal course of business or is certified as a true and accurate copy of the data recorded at the Commission in the normal course of its business shall be treated as a signed original in all uses before the Commission and as a duplicate within the meaning of Rule 1003 of the North Carolina Rules of Evidence."

Sec. 10. G.S. 97-53 reads as rewritten:

"§ 97-53. *Occupational diseases enumerated; when due to exposure to chemicals.*

The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

- (1) Anthrax.
- (2) Arsenic poisoning.
- (3) Brass poisoning.
- (4) Zinc poisoning.
- (5) Manganese poisoning.
- (6) Lead poisoning. Provided the employee shall have been exposed to the hazard of lead poisoning for at least 30 days in the preceding 12 months' period; and, provided further, only the employer in whose employment such employee was last injuriously exposed shall be liable.
- (7) Mercury poisoning.
- (8) Phosphorus poisoning.
- (9) Poisoning by carbon bisulphide, menthanol, naphtha or volatile halogenated hydrocarbons.
- (10) Chrome ulceration.
- (11) Compressed-air illness.
- (12) Poisoning by benzol, or by nitro and amido derivatives of benzol (dinitrolbenzol, anilin, and others).
- (13) Any disease, other than hearing loss covered in another subdivision of this section, which is proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment.
- (14) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances.
- (15) Radium poisoning or disability or death due to radioactive properties of substances or to roentgen rays, X rays or exposure to any other source of radiation; provided, however, that the disease under this subdivision shall be deemed to have occurred on the date that disability or death shall occur by reason of such disease.
- (16) Blisters due to use of tools or appliances in the employment.
- (17) Bursitis due to intermittent pressure in the employment.
- (18) Miner's nystagmus.
- (19) Bone felon due to constant or intermittent pressure in employment.
- (20) Synovitis, caused by trauma in employment.

- (21) Tenosynovitis, caused by trauma in employment.
- (22) Carbon monoxide poisoning.
- (23) Poisoning by sulphuric, hydrochloric or hydrofluoric acid.
- (24) Asbestosis.
- (25) Silicosis.
- (26) Psittacosis.
- (27) Undulant fever.
- (28) Loss of hearing caused by harmful noise in the employment. The following rules shall be applicable in determining eligibility for compensation and the period during which compensation shall be payable:
 - a. The term 'harmful noise' means sound in employment capable of producing occupational loss of hearing as hereinafter defined. Sound of an intensity of less than 90 decibels, A scale, shall be deemed incapable of producing occupational loss of hearing as defined in this section.
 - b. 'Occupational loss of hearing' shall mean a permanent sensorineural loss of hearing in both ears caused by prolonged exposure to harmful noise in employment. Except in instances of preexisting loss of hearing due to disease, trauma, or congenital deafness in one ear, no compensation shall be payable under this subdivision unless prolonged exposure to harmful noise in employment has caused loss of hearing in both ears as hereinafter provided.
 - c. No compensation benefits shall be payable for temporary total or temporary partial disability under this subdivision and there shall be no award for tinnitus or a psychogenic hearing loss.
 - d. An employer shall become liable for the entire occupational hearing loss to which his employment has contributed, but if previous deafness is established by a hearing test or other competent evidence, whether or not the employee was exposed to harmful noise within six months preceding such test, the employer shall not be liable for previous loss so established, nor shall he be liable for any loss for which compensation has previously been paid or awarded and the employer shall be liable only for the difference between the percent of occupational hearing loss determined as of the date of disability as herein defined and the percentage of loss established by the preemployment and audiometric

examination excluding, in any event, hearing losses arising from nonoccupational causes.

- e. In the evaluation of occupational hearing loss, only the hearing levels at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second shall be considered. Hearing losses for frequencies below 500 and above 3,000 cycles per second are not to be considered as constituting compensable hearing disability.
- f. The employer liable for the compensation in this section shall be the employer in whose employment the employee was last exposed to harmful noise in North Carolina during a period of 90 working days or parts thereof, and an exposure during a period of less than 90 working days or parts thereof shall be held not to be an injurious exposure; provided, however, that in the event an insurance carrier has been on the risk for a period of time during which an employee has been injuriously exposed to harmful noise, and if after insurance carrier goes off the risk said employee has been further exposed to harmful noise, although not exposed for 90 working days or parts thereof so as to constitute an injurious exposure, such carrier shall, nevertheless, be liable.
- g. The percentage of hearing loss shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second. Pure tone air conduction audiometric instruments, properly calibrated according to accepted national standards such as American Standards Association, Inc., (ASA), International Standards Organization (ISO), or American National Standards Institute, Inc., (ANSI), shall be used for measuring hearing loss. If more than one audiogram is taken, the audiogram having the lowest threshold will be used to calculate occupational hearing loss. If the losses of hearing average 15 decibels (26 db if ANSI or ISO) or less in the ~~three~~ four frequencies, such losses of hearing shall not constitute any compensable hearing disability. If the losses of hearing average 82 decibels (93 db if ANSI or ISO) or more in the ~~three~~ four frequencies, then the same shall constitute and be total or one hundred percent (100%) compensable hearing loss. In measuring hearing impairment, the lowest measured losses in each of the ~~three~~ four frequencies

shall be added together and divided by ~~three~~ four to determine the average decibel loss. For each decibel of loss exceeding 15 decibels (26 db if ANSI or ISO) an allowance of one and one-half percent (1 1/2%) shall be made up to the maximum of one hundred percent (100%) which is reached at 82 decibels (93 db if ANSI or ISO). In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear, and the sum of the two divided by six. The final percentage shall represent the binaural hearing impairment.

- h. There shall be payable for total occupational loss of hearing in both ears 150 weeks of compensation, and for partial occupational loss of hearing in both ears such proportion of these periods of payment as such partial loss bears to total loss.
- i. No claim for compensation for occupational hearing loss shall be filed until after six months have elapsed since exposure to harmful noise with the last employer. The last day of such exposure shall be the date of disability. The regular use of employer-provided protective devices capable of preventing loss of hearing from the particular harmful noise where the employee works shall constitute removal from exposure to such particular harmful noise.
- j. No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid. The North Carolina Industrial Commission may order the employer to provide the employee with an original hearing aid if it will materially improve the employee's ability to hear.
- k. No compensation benefits shall be payable for the loss of hearing caused by harmful noise after October 1, 1971, if employee fails to regularly utilize employer-provided protection device or devices, capable of preventing loss of hearing from the particular harmful noise where the employee works.

Occupational diseases caused by chemicals shall be deemed to be due to exposure of an employee to the chemicals herein mentioned only when as a part of the employment such employee is exposed to such chemicals in such form and quantity, and used with such

frequency as to cause the occupational disease mentioned in connection with such chemicals."

Sec. 11. G.S. 97-40.1(a) reads as rewritten:

"(a) There is hereby created a fund to be known as the 'Second Injury Fund,' to be held and disbursed by the Industrial Commission as hereinafter provided.

For the purpose of providing money for said fund the Industrial Commission may assess against the employer or its insurance carrier the payment of not to exceed ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00) for the loss, or loss of use, of each minor member in every case of a permanent partial disability where there is such loss, and shall assess not to exceed ~~two hundred dollars (\$200.00)~~ five hundred dollars (\$500.00) for fifty percent (50%) or more loss or loss of use of each major member, defined as back, foot, leg, hand, arm, eye, or hearing.

In addition to the assessments hereinabove provided for, the Commission shall also deposit in said fund all moneys received by it for the Second Injury Fund under the provisions of G.S. 97-40."

Sec. 12. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

S.B. 470

CHAPTER 704

AN ACT TO AUTHORIZE MAGISTRATES TO ISSUE CUSTODY ORDERS FOR TRANSPORTATION OF CLIENTS BETWEEN TWENTY-FOUR-HOUR FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. 122C-206(c1) reads as rewritten:

"(c1) If a client described in subsections (b) or (c) of this section is to be transferred from one 24-hour facility to another and transportation is needed, the responsible professional at the original facility shall notify the clerk of ~~court~~, court or a magistrate, and the clerk of court or magistrate shall issue a custody order for transportation of the client as provided by G.S. 122C-251."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

S.B. 766

CHAPTER 705

AN ACT TO PROVIDE THAT THE DEPARTMENT OF JUSTICE MAY PROVIDE A CRIMINAL RECORD CHECK TO THE

EMPLOYER OF A SCHOOL EMPLOYEE OR POTENTIAL
EMPLOYEE WITH THE CONSENT OF THE EMPLOYEE OR
APPLICANT.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 114 is amended by adding a new section to read:

"§ 114-19.2. Criminal record checks of school personnel.

(a) The Department of Justice may provide a criminal record check to the local board of education of a person who is employed in a public school in that local school district or of a person who has applied for employment in a public school in that local school district, if the employee or applicant consents to the record check. The information shall be kept confidential by the local board of education as provided in Article 21A of Chapter 115C.

(b) The Department of Justice may provide a criminal record check to the employer of a person who is employed in a nonpublic school or of a person who has applied for employment in a nonpublic school, if the employee or applicant consents to the record check. For purposes of this subsection, the term nonpublic school is one that is subject to the provisions of Article 39 of Chapter 115C of the General Statutes, but does not include a home school as defined in that Article.

(c) The Department of Justice shall charge a reasonable fee for conducting a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(d) The Department of Justice shall adopt rules to implement this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

H.B. 494

CHAPTER 706

AN ACT TO ENCOURAGE THE BUSINESS COMMUNITY TO
FACILITATE STUDENT ACHIEVEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-47 is amended by adding a new subdivision to read:

"(34) To encourage the business community to facilitate student achievement. -- Local boards of education, in consultation with local business leaders, shall develop voluntary guidelines relating to after-school employment. The

guidelines may include an agreement to limit the number of hours a student may work or to tie the number of hours a student may work to his academic performance, school attendance, and economic need. The General Assembly finds that local boards of education do not currently have information regarding how many of their students are employed after school and how many hours they work; the General Assembly urges local boards of education to compile this critical information so that the State can determine to what extent these students' work affects their school performance.

Local boards of education shall work with local business leaders to encourage employers to provide parents or guardians with time to attend conferences with their children's teachers.

The Superintendent of Public Instruction shall provide guidance and technical assistance to the local boards of education on carrying out the provisions of this subdivision."

Sec. 2. Local boards of education shall report their actions taken to implement this subdivision to the State Board of Education before April 1, 1992, and the State Board of Education shall report the actions taken statewide to implement this subdivision to the Joint Legislative Education Oversight Committee before May 1, 1992.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

S.B. 41

CHAPTER 707

AN ACT TO MAKE TECHNICAL CHANGES TO THE SAVINGS INSTITUTIONS LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 54B-10 reads as rewritten:

" § 54B-10. *Certificate of incorporation.*

(a) The certificate of incorporation of a proposed mutual savings and loan association shall set forth:

- (1) The name of the association, which must not so closely resemble the name of an existing association doing business under the laws of this State as to be likely to mislead the public;
- (2) The county and city or town where its principal office is to be located in this State; and the name of its registered agent

and the address of its registered office, including county and city or town, and street and number;

- (3) The period of duration, which may be perpetual. When the certificate of incorporation fails to state the period of duration, it shall be considered perpetual;
- (4) The purposes for which the association is organized, which shall be limited to purposes permitted under the laws of this State for savings and loan associations;
- (5) The amount of the entrance fee per withdrawable account based upon the amount pledged;
- (6) The minimum amount on deposit in withdrawable accounts before it shall commence business;
- (7) Any provision not inconsistent with this Chapter and the proper operation of a savings and loan association, which the incorporators shall set forth in the certificate of incorporation for the regulation of the internal affairs of the association;
- (8) The number of directors, which shall not be less than seven, constituting the initial board of directors (which may be classified in ~~accordance with the provisions of G.S. 55-8-06~~ the certificate of incorporation) and the name and addresses of each person who is to serve as a director until the first meeting of members, or until his successor be elected and qualified;
- (9) The names and addresses of the incorporators.

(b) The certificate of incorporation of a proposed stock savings and loan association shall set forth:

- (1) The name of the association, which must not so closely resemble the name of an existing association doing business under the laws of this State as to be likely to mislead the public;
- (2) The county and city or town where its principal office is to be located in this State; and the name of its registered agent and the address of its registered office, including county and city or town, and street and number;
- (3) The period of duration, which may be perpetual. When the certificate of incorporation fails to state the period of duration, it shall be considered perpetual;
- (4) The purposes for which the association is organized, which shall be limited to purposes permitted under the laws of this State for savings and loan associations;
- (5) With respect to the shares of stock which the association shall have authority to issue:

- a. If the stock is to have a par value, the number of such shares of stock and the par value of each;
 - b. If the stock is to be without par value, the number of such shares of stock;
 - c. If the stock is to be of both kinds mentioned in paragraphs a and b of subdivision (5) of this subsection, particulars in accordance with those paragraphs;
 - d. If the stock is to be divided into classes, or into series within a class of preferred or special shares of stock, the certificate of incorporation shall also set forth a designation of each class, with a designation of each series within a class, and a statement of the preferences, limitations, and relative rights of the stock of each class or series;
- (6) The minimum amount of consideration to be received for its shares of stock before it shall commence business;
 - (7) A statement as to whether stockholders have preemptive rights to acquire additional or treasury shares of the association and any provision limiting or denying said rights;
 - (8) Any provision not inconsistent with this Chapter or the proper operation of a savings and loan association, which the incorporators shall set forth in the certificate of incorporation for the regulation of the internal affairs of the association;
 - (9) The number of directors, which shall not be less than seven, constituting the initial board of directors (which may be classified in ~~accordance with the provisions of G.S. 55-8-06~~ the certificate of incorporation) and the name and address of each person who is to serve as a director until the first meeting of the stockholders, or until his successor be elected and qualified;
 - (10) The names and addresses of the incorporators.
- (c) The certificate of incorporation, whether for a mutual association or stock association, shall be signed by the original incorporators, or a majority of them, but not less than 10, and shall be acknowledged before an officer duly authorized under the law of this State to take proof or acknowledgement of deeds, and shall be filed along with two conformed copies in the office of the Administrator as provided in G.S. 54B-9."

Sec. 2. G.S. 54B-40 reads as rewritten:

" § 54B-40. *Voluntary dissolution by directors.*

A State association may be voluntarily dissolved by a majority vote of the board of directors when substantially all of the assets have been sold for the purpose of terminating the business of the association or as provided in G.S. 55-14-01, and when a certificate of dissolution is recorded in the manner required by this Chapter for the recording of certificates of incorporation."

Sec. 3. G.S. 54B-62 reads as rewritten:

"§ 54B-62. *Relationship of savings and loan associations with the Savings Institutions Division.*

(a) Except as provided by subsection (b) of this section, a savings and loan association or any director, officer, employee, or representative thereof shall not grant or give to the Administrator or to any employee of the Administrator's office, or to their spouses, any loan or gratuity, directly or indirectly.

(b) Neither the Administrator nor any person on the staff of the Savings Institutions Division shall:

(1) Hold an office or position in any State association or exercise any right to vote on any State association matter by reason of being a member of the association;

(2) Be interested, directly or indirectly in any savings and loan association organized under the laws of this State; or

(3) Undertake any indebtedness, as a borrower directly or indirectly or endorser, surety or guarantor, or sell or otherwise dispose of any loan or investment to any savings and loan association organized under the laws of this State.

(c) Notwithstanding subsection (b) of this section, the Administrator or any other person employed in or by his office may be a withdrawable account holder and receive earnings on such account.

(d) If the Administrator or other person has any prohibited right or interest in a savings and loan association, either directly or indirectly, at the time of his appointment or employment, he shall dispose of it within 60 days after the date of his appointment, or employment. If the Administrator or other such person is indebted as borrower directly or indirectly, or is an endorser, surety or guarantor on a note, at the time of his appointment or employment, he may continue in such capacity until such loan is paid off.

(e) If the Administrator or any employee of the Division has a loan or other note acquired by a State savings bank through the secondary market, he may continue with the debt until such loan or note is paid off."

Sec. 4. G.S. 54B-101 reads as rewritten:

"§ 54B-101. *Directors.*

(a) The directors of a mutual association shall be elected by the members at an annual meeting, held pursuant to the terms of G.S.

54B-106, for such terms as the bylaws of the association may provide. Directors' terms may be classified in the certificate of incorporation. Voting for directors by withdrawable account holders shall be weighted according to the total amount of withdrawable accounts held by such members, subject to any maximum number of votes per member which an association may choose to prescribe in the bylaws of the association. Such requirements shall be fully prescribed in a detailed manner in the bylaws of the association.

(b) The directors of a stock association shall be elected by the stockholders at an annual meeting, held pursuant to the terms of G.S. 54B-106, for such terms as the bylaws of the association may provide. ~~Voting for directors shall be weighted according to the number of shares of stock held by a stockholder. Such requirements shall be fully prescribed in a detailed manner in the bylaws of the association.~~ Directors' terms may be classified in the certificate of incorporation.

(c) Every State association shall have no less than five directors."

Sec. 5. G.S. 54B-131 reads as rewritten:

" § 54B-131. Right of setoff on withdrawable accounts.

(a) Every association shall have a right of setoff, without further agreement or pledge, upon all withdrawable accounts owned by any member or customer to whom or upon whose behalf the association has made an unsecured advance of money by loan; and upon the default in the repayment or satisfaction thereof the association may, ~~with 30 days notice to the member or customer,~~ cancel on its books all or any part of the withdrawable accounts owned by such member or customer, and apply the value of such accounts in payment on account of such obligation. ~~Any association may accept the pledge of withdrawable accounts in such association owned by a member or customer, other than the borrower as additional security for any loan secured by a withdrawable account or by a withdrawable account and real property, or as additional security for any real property loan.~~

(b) An association which exercises the right of setoff provided in this section shall first give 30 days' notice to the member or customer that such right will be exercised. Such accounts may be held or frozen, with no withdrawals permitted, during the 30-day notice period. Such accounts may not be canceled and the value thereof may not be applied to pay such obligation until the 30-day period has expired without the member or customer having cured the default on the obligation. The amount of any member's or customer's interest in a joint account or other account held in the names of more than one person shall be subject to the right of setoff provided in this section.

(c) This section is not exclusive, but shall be in addition to contract, common law and other rights of setoff. Such other rights shall not be governed in any fashion by this section."

Sec. 6. G.S. 54B-132(a) reads as rewritten:

"§ 54B-132. Minors as withdrawable account holders; safe deposit box lessees.

(a) An association may issue a withdrawable account to a minor as the sole and absolute owner, or as a joint owner, and receive payments, pay withdrawals, accept pledges and act in any other manner with respect to such account on the order of the minor with like effect as if he were of full age and legal capacity. Any payment to a minor shall be a discharge of the association to the extent thereof. The account shall be held for the exclusive right and benefit of the minor, and any joint owners, free from the control of all persons, except creditors."

Sec. 7. Article 3 of Chapter 54B of the General Statutes is amended by adding a new section to read:

"§ 54B-47. Merger of banks and associations.

(a) Any State association, upon a majority vote of its board of directors, may apply to the Administrator for permission to merge with any bank, as defined in G.S. 53-1.

(b) The State association shall submit a plan of merger as a part of the application to the Administrator. The Administrator may recommend approval of the plan of merger with or without amendment.

If he approves the plan, then the plan shall be submitted to the stockholders or members as provided in the next subsection. If he refuses to approve the plan, he shall state his objections in writing and give the merging association an opportunity to amend the plan to obviate such objections or to appeal his decision to the commission.

(c) After lawful notice to the stockholders or members of the association and full and fair disclosure, the substance of the plan must be approved by a majority of the total votes which stockholders or members of the association are eligible and entitled to cast. Such a vote by the stockholders or members may be in person or by proxy. Following the vote of the stockholders or members, the results of the vote certified by an appropriate officer of the association shall be filed with the Administrator. The Administrator shall then either approve or disapprove the requested merger.

(d) The Administrator may promulgate such rules and regulations as may be necessary to govern such mergers."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 539

CHAPTER 708

AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE
TO ESTABLISH THE TIME PERIOD FOR STAMPING
CIGARETTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-113.20 reads as rewritten:

" § 105-113.20. *Distributors to affix stamps.*

Only licensed distributors shall affix stamps. A licensed distributor shall not sell, borrow, loan, ~~buy~~ buy, or exchange stamps to, ~~from~~ from, or with any other person, except as provided in G.S. 105-113.19.

~~Unless stamps have been previously affixed, the stamps required by this Article shall be affixed to packages by the licensed distributor within 48 hours of the receipt of all unstamped cigarettes, exclusive of Saturdays, Sundays and legal holidays of this State, and A licensed distributor who receives unstamped packages of cigarettes shall affix stamps to the packages within the time required by the Secretary. A licensed distributor shall affix stamps to the packages prior to any and all deliveries to other persons except deliveries to points outside the State, deliveries by manufacturers to licensed distributors and those deliveries which this State is prohibited from taxing under the Constitution or the statutes of the United States."~~

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 652

CHAPTER 709

AN ACT TO AMEND THE "CLEAN RISK" DEFINITION IN THE
NORTH CAROLINA MOTOR VEHICLE REINSURANCE
FACILITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-37-35(l) reads as rewritten:

"(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory rating organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for 'clean risks' as herein defined. ~~For the purpose of this Article, a 'clean risk' shall be any owner of a motor vehicle classified as a private passenger non-fleet motor vehicle~~

~~as defined under Article 40 of this Chapter if the owner and the principal operator and each licensed operator in the owner's household have two years' driving experience and if neither the owner nor any member of his household nor the principal operator had had any chargeable accident or any conviction for a moving traffic violation pursuant to the subclassification plan established by the provisions of G.S. 58-36-65, during the three-year period immediately preceding the date of application for motor vehicle insurance or the date of preparation for a renewal motor vehicle insurance policy. For the purpose of this Article, a 'clean risk' shall be any owner of a nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal operator, and each licensed operator in the owner's household have two years' driving experience as licensed drivers and if none of the persons has been assigned any Safe Driver Incentive Plan points under Article 36 of this Chapter during the three-year period immediately preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date of preparation of a renewal of a motor vehicle insurance policy. Such filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, he shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, such rate shall be deemed no longer effective. Said order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of said order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this Chapter. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to 'clean risks', as defined above, shall not exceed the rates charged 'clean risks' who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates for 'clean risks' reinsured in the Facility may be recouped in similar manner as assessments pursuant to G.S. 58-37-40(f) or allocated pursuant to G.S. 58-37-75. Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive."~~

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 760

CHAPTER 710

AN ACT TO AMEND THE LAW CONCERNING THE
QUALIFICATIONS OF NURSING HOME ADMINISTRATORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-278 reads as rewritten:

" § 90-278. *Qualifications for licensure.*

The Board shall have authority to issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators.

(1) A license as a nursing home administrator shall be issued to any person upon the Board's determination that:

- a. He is at least 18 years of age, of good moral character and of sound physical and mental health; and
- b. He has successfully completed the equivalent of two years of college level study (60 semester hours or 96 quarter hours) from an accredited community college, college or university prior to application for licensure;
or
has completed a combination of education and experience, acceptable under rules promulgated by the Board, prior to application for licensure. Under this provision, two years of supervisory experience in a nursing home shall be equated to one year of college study; and
- c. He has satisfactorily completed a course prescribed by the Board, which course contains instruction on the services provided by nursing homes, laws governing nursing homes, protection of patient interests and nursing home administration; and
- d. He has successfully completed his training period as an administrator-in-training as prescribed by the Board ~~or has professional experience the Board declares is comparable to a period of training as an administrator; and has professional experience the Board declares is comparable to a period of training as an administrator; and~~ Board. If a person has served at least 12 weeks as a hospital administrator or assistant administrator of a hospital-based long-term care nursing unit or hospital-based swing beds licensed under Article 5 of Chapter

131E or Article 2 of Chapter 122C, the Board shall consider this experience comparable to the initial on-the-job portion of the administrator-in-training program only; and

- e. He has passed examinations administered by the Board and designed to test for competence in the subject matters referred to in paragraph c of this subdivision.
- (2) Repealed by Session Laws 1981, c. 722, s. 6.
- (3) A temporary license may be issued under requirements and conditions prescribed by the Board to any person to act or serve as administrator of a nursing home without meeting the requirements for full licensure, but only when there are unusual circumstances preventing compliance with the procedures for licensing elsewhere provided by this Article. The temporary license shall be issued by the chairman only for the period prior to the next meeting of the Board, at which time the Board may renew such temporary license for a further period only up to one year."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 814

CHAPTER 711

AN ACT TO AMEND THE LAW RELATING TO THE ADVISORY COMMITTEE ON HOME AND COMMUNITY CARE FOR OLDER ADULTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-181.9A reads as rewritten:

"§ 143B-181.9A. *Advisory Committee on Home and Community Care.*

(a) There is established the Advisory Committee on Home and Community Care for Older Adults within the Department of Human Resources. In order to achieve a coordinated, county-based, full service system for older adults and their families, this This Committee shall recommend to the Department of Human Resources and the General Assembly the design and implementation of managed care programs for high-risk older adults at the county level; initiatives and strategies to address the social, income security and employment, mental health, health, and housing needs of at-risk older adults. To the end of achieving coordinated Programs on Aging in all North Carolina counties that both care for and invest in older adults, methods for alleviating the service fragmentation and client intake duplication associated with in-home and community based

~~supportive services for older adults and their families. To achieve a coordinated full service system of home and community care for older adults, the Committee shall recommend make recommendations regarding common service definitions, service standards, assessment instruments, reporting requirements, eligibility criteria, and reimbursement methods compatible with a coordinated system of care, standards and guidelines for county-based Programs on Aging, county aging plans, and managed care programs for high-risk older adults. These recommendations shall build on the needs and goals developed through local input of all 100 North Carolina counties and with the assistance and consultation of the Area Agencies on Aging and the Division of Aging.~~

(b) The Committee shall be guided by the following program and policy goals:

- (1) ~~To provide high-risk and at-risk older adults and their families elderly individuals with options for quality home and community based care:~~

- (1.1) To provide older adults with opportunities for continued productive aging through employment, volunteer, and self-help activities;

- (2) To ensure a coordinated and efficient utilization of public and private resources; and

- (3) To build on the current strengths and initiatives in North Carolina's aging and long-term care service networks.

(c) The Committee's recommendations will include consideration of the following:

- (1) ~~In-Home and Supportive Family Caregiver Services: The identification of a core set of in-home and supportive family services for older adults in need regardless of their county of residence;~~

- (2) ~~Services in the Least Restrictive Environment: Provision of choice to older adults of receiving necessary services in the least restrictive environment or program setting compatible with the individual's safety and well-being;~~

- (1.1) Comprehensive County-Based Programs on Aging: the establishment of comprehensive, coordinated county-based programs on aging in all North Carolina counties by the year 2000;

- (1.2) Managed Care for High-Risk Older Adults: The establishment of managed care programs for high-risk older adults in all North Carolina counties by the year 2000. These programs shall provide high-risk older adults with the option of remaining in the least restrictive

environment of their choice with the support of a core of supportive home and community services;

- (2.1) Options for At-Risk Older Adults: Strategies and initiatives for at-risk older adults that provide them with home and community care options for an improved quality of life in the areas of social functioning, employment and income security, mental health, health care, and housing;

- (2.2) Investment in Well Older Adults: Strategies and initiatives for well older adults that facilitate productive aging in the areas of continued employment, volunteerism, and self-help;

- (3) Coordinated Aging Services Budget: Compilation of a State aging services budget to coordinate existing program funding sources, to develop a common funding stream, and to identify new funding resources to meet the needs of older adults, including the identification of the availability of private sector resources; adults; and

- (4) Guidelines, Standards, and Procedures: To the greatest extent possible, development of compatible service definitions, service standards, assessment instruments, eligibility criteria, reimbursement methods, and reporting requirements for in-home and community based services for older adults, throughout the Department of Human Resources; Resources.

- ~~(5) Independent Evaluation of Information and Referral Projects: Independent evaluation of the seven existing Information and Referral Projects funded through the Division of Aging. Elements of the evaluation, to be completed by May 1, 1990, shall include evaluation of criteria, standards for the demonstrations, expenditures, and a self-evaluation by the projects; and~~

- ~~(6) Design of Coordinated Home and Community Care Demonstrations for At-Risk Older Adults: Development of necessary guidelines, standards, procedures, and cost estimates for implementing coordinated home and community care demonstrations in no fewer than four and no more than eight pilot counties. The establishment of demonstrations in coordinated home and community care shall be coordinated with the Division of Aging's efforts to facilitate the development of county plans on aging and a State plan on aging.~~

(d) The Committee shall consist of the Secretary of the Department of Human Resources and 25 32 members, to be appointed as follows:

- (1) One member each appointed by the Secretary of the Department of Human Resources from the Divisions of Aging, of Medical Assistance, of Mental Health, Developmental Disabilities, and Substance Abuse Services, of Social Services, and one director of an area agency on aging elected from among all the directors of the area agencies on aging. One member appointed by the Secretary of Environment, Health, and Natural Resources.
- (2) One member each appointed by the Secretary of the Department of Human Resources from the North Carolina Institute of Medicine, the North Carolina Health Care Facilities Association, the Center for Aging Research and Educational Services at The University of North Carolina at Chapel Hill, the Long-Term Care Resources Program at Duke University, the North Carolina Association of Long-Term Care Facilities, the North Carolina Association for Home Care, the Center for Creative Retirement, University of North Carolina at Asheville, Asheville, the Geriatric Medicine Programs at the following institutions: (i) Bowman Gray School of Medicine of Wake Forest University, (ii) the School of Medicine of the University of North Carolina at Chapel Hill, (iii) the School of Medicine at Duke University, and (iv) the School of Medicine at East Carolina University, the North Carolina Association of Continuity of Care, the North Carolina Association of Hospital Social Work Directors, the North Carolina Medical Society, and the North Carolina Hospital Association.
- (3) ~~Three members~~ One member appointed from the House of Representatives by the Speaker of the House of Representatives;
- (4) ~~Three members~~ One member appointed from the Senate by the President Pro Tempore of the Senate;
- (5) One member who is a county commissioner appointed by the Secretary of the Department of Human Resources, upon the recommendation of the North Carolina Association of County Commissioners; and
- (6) ~~Four~~ Eight members appointed by the Secretary of the Department of Human Resources, one upon the recommendation of the North Carolina Association on Aging, one other upon the recommendation of the Association of Local Health Directors, one other upon the recommendation of the Association of the County

Directors of Social Services, and one other upon the recommendation of Hospice of North Carolina, Carolina, one other from the Governor's Advisory Council on Aging, upon recommendation of that organization, two others upon recommendation of the American Association of Retired Persons, and one other from the North Carolina Senior Citizens Association, upon recommendation of that organization.

The Secretary of the Department of Human Resources shall be Chair of the Committee. Members shall serve at the pleasure of the Secretary. Vacancies shall be filled in the same manner as the initial appointment.

(e) The Committee shall, in performing its charge, develop an annual work plan and convene task forces or work groups comprised of interested State and local public and private service providers, older adult consumer groups, university programs on aging, distinguished gerontologists, and others, as ~~appropriate~~, appropriate for making recommendations.

(f) The Committee shall make a written progress report each March 1, beginning in 1990, of every odd-numbered year, beginning in 1991. The report shall be submitted to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Legislative Services Office, and the North Carolina Study Commission on Aging."

Sec. 2. This act shall be funded from funds currently available. No additional funds are required to be appropriated to implement this act.

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 943

CHAPTER 712

AN ACT TO REQUIRE THE REGISTRATION OF WATER WITHDRAWALS AND TRANSFERS OF ONE MILLION GALLONS OR MORE PER DAY.

The General Assembly of North Carolina enacts:

Section 1. Article 21 of Chapter 143 is amended by adding a new Part to read:

"Part 2A. Registration of Water Withdrawals and Transfers.

"§ 143-215.22A. Definitions.

In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following definitions apply to this Part.

- (1) 'River basin' means any of the following river basins designated on the map entitled 'Major River Basins and Sub-basins in North Carolina' and filed in the Office of the Secretary of State on 16 April 1991:

a.	1-1	<u>Broad River.</u>
b.	2-1	<u>Haw River.</u>
c.	2-2	<u>Deep River.</u>
d.	2-3	<u>Cape Fear River.</u>
e.	2-4	<u>South River.</u>
f.	2-5	<u>Northeast Cape Fear River.</u>
g.	2-6	<u>New River.</u>
h.	3-1	<u>Catawba River.</u>
i.	3-2	<u>South Fork Catawba River.</u>
j.	4-1	<u>Chowan River.</u>
k.	4-2	<u>Meherrin River.</u>
l.	5-1	<u>Nolichucky River.</u>
m.	5-2	<u>French Broad River.</u>
n.	5-3	<u>Pigeon River.</u>
o.	6-1	<u>Hiwassee River.</u>
p.	7-1	<u>Little Tennessee River.</u>
q.	7-2	<u>Tuskasegee (Tuckasegee) River.</u>
r.	8-1	<u>Savannah River.</u>
s.	9-1	<u>Lumber River.</u>
t.	9-2	<u>Big Shoe Heel Creek.</u>
u.	9-3	<u>Waccamaw River.</u>
v.	9-4	<u>Shallotte River.</u>
w.	10-1	<u>Neuse River.</u>
x.	10-2	<u>Contentnea Creek.</u>
y.	10-3	<u>Trent River.</u>
z.	11-1	<u>New River.</u>
aa.	12-1	<u>Albemarle Sound.</u>
bb.	13-1	<u>Ocoee River.</u>
cc.	14-1	<u>Roanoke River.</u>
dd.	15-1	<u>Tar River.</u>
ee.	15-2	<u>Fishing Creek.</u>
ff.	15-3	<u>Pamlico River and Sound.</u>
gg.	16-1	<u>Watauga River.</u>
hh.	17-1	<u>White Oak River.</u>
ii.	18-1	<u>Yadkin (Yadkin-Pee Dee) River.</u>
jj.	18-2	<u>South Yadkin River.</u>
kk.	18-3	<u>Uwharrie River.</u>
ll.	18-4	<u>Rocky River.</u>

- (2) 'Surface water' means any of the waters of the State located on the land surface that are not derived by pumping from groundwater.
- (3) 'Transfer' means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin.

" § 143-215.22B. Registration of water withdrawals and transfers required.

(a) Any person who withdraws 1,000,000 gallons per day or more of water from the surface waters of the State or who transfers 1,000,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

- (1) The maximum daily amount of the water withdrawal or transfer expressed in millions of gallons per day.
- (2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.

(b) Any person initiating a new surface water withdrawal or transfer of 1,000,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than six months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer."

Sec. 2. G.S. 143-215.3(1b) reads as rewritten:

"(1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing of an application for a permit under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed four hundred dollars (\$400.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a registration under Article 38 or Part 2A of this Chapter may not exceed fifty dollars (\$50.00) for any single application, except that a penalty of as much as twenty percent (20%) of the fee may be assessed for late registration. The fee for administering and compliance monitoring under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars (\$1,500) per year. Fees for processing all permits under Article 21A and all other Sections of Articles 21 and 21B shall not exceed one hundred dollars (\$100.00) for any single permit. Notwithstanding any other provision of this subdivision, the total payment for fees required for all

permits under this subsection for any single facility shall not exceed seven thousand five hundred dollars (\$7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Such fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for such renewal or amendment."

Sec. 3. All withdrawals and transfers of surface waters that are existing or planned on the date this act becomes effective shall be registered as required by G.S. 143-215.22B by 1 January 1992.

Sec. 4. The Department of Environment, Health, and Natural Resources shall submit a report to the General Assembly by 1 April 1992 summarizing the registration information on existing and proposed water withdrawals and transfers registered under the provisions of this act.

Sec. 5. G.S. 143-215.22A(b), as enacted by Chapter 567 of the 1991 Session Laws, reads as rewritten:

~~"(b) In an action brought by the State in the superior court of any county bordering such reservoir or river, any such withdrawal, and all steps taken to facilitate that withdrawal, shall be enjoined upon a showing that said public policy has been violated. If the withdrawal occurs, the withdrawing party shall be liable to the State for damages in an amount equal to the maximum value of the water withdrawn, as if that water were put to its most valuable theoretical use. In calculating such damages, the court shall take into account the continuing nature of the withdrawal, and the potential that the maximum value of water may increase in the future as a result of scarcity or other factors. This section shall not be construed to create an independent cause of action by the State or by any person. This~~

section shall not apply to any project or facility for which a withdrawal of water began prior to the date this section is effective."

Sec. 6. G.S. 143-215.22A(c), as enacted by Chapter 567 of the 1991 Session Laws, is repealed.

Sec. 7. Sections 1 through 4 of this act are effective upon ratification. Sections 5 through 7 of this act are effective retroactively as of 4 July 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 39

CHAPTER 713

AN ACT TO PROVIDE THAT NO SAFE DRIVER INCENTIVE PLAN POINTS SHALL BE ASSESSED FOR THE FIRST ACCIDENT WITHIN THREE YEARS IF THERE IS PROPERTY DAMAGE ONLY AND NO MOVING VIOLATION INVOLVED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-36-75 is amended by adding a new subsection to read:

"(a1) The subclassification plan shall provide that there shall be no premium surcharge, increase in premium on account of cession to the Reinsurance Facility, or assessment of points against an insured where: (i) the insured is involved and is at fault in a 'minor accident,' as defined in subsection (a) of this section; (ii) the insured is not convicted of a moving traffic violation in connection with the accident; (iii) neither the vehicle owner, principal operator, nor any licensed operator in the owner's household has a driving record consisting of one or more convictions for a moving traffic violation or one or more at-fault accidents during the three-year period immediately preceding the date of the application for a policy or the date of the preparation of the renewal of a policy; and (iv) the insured has been covered by liability insurance with the same company or company group continuously for at least the six months immediately preceding the accident. Notwithstanding (iv) of this subsection, if the insured has been covered by liability insurance with the same company or company group for at least six continuous months, some or all of which were after the accident, the insurance company shall remove any premium surcharge or assessment of points against the insured if requirements (i), (ii), and (iii) of this subsection are met. Also notwithstanding (iv) of this subsection, an insurance company may choose not to assess a premium surcharge or points against an insured who has been covered by liability insurance with that company

or with the company's group for less than six months immediately preceding the accident, if requirements (i), (ii), and (iii) are met."

Sec. 2. The North Carolina Rate Bureau shall promulgate an amendment to the subclassification plan to reflect the provisions of this act. The Bureau shall make a filing no later than September 1, 1991, and the plan promulgated shall become effective January 1, 1992. The plan shall apply only to at-fault accidents that occur on or after January 1, 1992. With respect to any at-fault accidents occurring prior to January 1, 1992, the surcharge and period for which the surcharge is applied and collected shall be determined by the subclassification plan in effect at the time the at-fault accident occurred.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 62

CHAPTER 714

AN ACT TO APPOINT PERSONS TO VARIOUS BOARDS AND COMMISSIONS UPON THE RECOMMENDATION OF THE PRESIDENT OF THE SENATE.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President of the Senate; and

Whereas, the President of the Senate has made his recommendations; Now, therefore.

The General Assembly of North Carolina enacts:

Section 1. Sanford W. Bailey of Wake County is appointed to the State Board of Transportation for a term to expire June 30, 1993.

Sec. 2. Joe Beck of Jackson County and James Robert McLester of Richmond County are appointed to the Low-Level Radioactive Waste Management Authority for terms to expire June 30, 1995.

Sec. 3. F.J. "Sonny" Faison of Sampson County and Edward T. Taws of Moore County are appointed to the North Carolina State Ports Authority for terms to expire June 30, 1993.

Sec. 4. Alfred L. Esposito of Forsyth County and Mike Youngblood of New Hanover County are appointed to the North Carolina Technological Development Authority for terms to expire June 30, 1995.

Sec. 5. Douglas S. Boykin of Pender County and Winston W. Pulliam of Buncombe County are appointed to the Environmental Management Commission for terms to expire June 30, 1993.

Sec. 6. A. A. "Dick" Adams of Pitt County is appointed to the Crime Victims' Compensation Commission for a term to expire June 30, 1995.

Sec. 7. Robert P. Holding, III of New Hanover County and David Smith of Nash County are appointed to the Board of Public Telecommunications Commissioners for terms to expire June 30, 1993.

Sec. 8. Ronald N. Barker of Forsyth County is appointed to the Sheriff's Education and Training Standards Commission for a term to expire June 30, 1993.

Sec. 9. John B. Coddington of New Hanover County is appointed to the North Carolina Board of Science and Technology for a term to expire June 30, 1993.

Sec. 10. Chester W. Crisp of Graham County is appointed to the Board of Trustees of the North Carolina Public Employees Deferred Compensation Plan for a term to expire June 30, 1995.

Sec. 11. Robert G. Redmond of Franklin County is appointed to the Criminal Justice Education and Training Standards Commission for a term to expire June 30, 1993.

Sec. 12. Marleen A. Carter of Mecklenburg County is appointed to the Child Day Care Commission for a term to expire June 30, 1993. This is the public member categorical appointment. Dionne L. Shaw of Wake County is appointed to the Child Day Care Commission for a term to expire June 30, 1993. This is the categorical appointment for a parent of a child enrolled in day care.

Sec. 13. Harold Cummings of Wake County is appointed to the North Carolina Commission of Indian Affairs for a term to expire June 30, 1993.

Sec. 14. George W. Jackson of Person County and James B. Mallory of Iredell County are appointed to the Administrative Rules Review Commission for terms to expire June 30, 1993. David A. Harlowe of Durham County is appointed to the Administrative Rules Review Commission for a term to expire June 30, 1992.

Sec. 15. William Brantley of Nash County is appointed to the Governor's Advocacy Council for Persons with Disabilities for a term to expire June 30, 1993.

Sec. 16. Bobby Jones Crumley of Randolph County is appointed to the Private Protective Services Board for a term to expire June 30, 1994.

Sec. 17. Daniel B. Gray of Dare County is appointed to the North Carolina Seafood Industrial Park Authority for a term to expire June 30, 1993.

Sec. 18. Thomas F. Ellis of Wake County is appointed to the Board of Trustees of The University of North Carolina Center for Public Television for a term to expire June 30, 1993.

Sec. 19. George L. Bradley of Gaston County is appointed to the Governor's Waste Management Board for a term to expire June 30, 1993.

Sec. 20. James B. Powell of Alamance County is appointed to the North Carolina School of Science and Mathematics Board of Trustees for a term to expire June 30, 1995.

Sec. 21. Thomas E. Ryan of Alamance county is appointed to the North Carolina Medical Database Commission for a term to expire June 30, 1994. This appointment is for the hospital administrator position.

Sec. 22. Marie T. Gardner of Nash County is appointed to the Board of Trustees of the North Carolina Museum of Art for a term to expire June 30, 1993.

Sec. 23. Ronald Ernest Cohn of Wilkes County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term to expire June 30, 1993. Deems H. Clifton of Sampson County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term to expire June 30, 1992. These are the at-large categorical appointments. Donald Q. Pate of Wake County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term to expire June 30, 1993. This is the categorical appointment for a State employee.

Sec. 24. James S. Fulghum, III of Wake County and William R. Bolin of Henderson County are appointed to the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services for terms to expire June 30, 1993.

Sec. 25. Kenneth E. Morris, Jr. of Craven County is appointed to the Public Officers and Employees Liability Insurance Commission for a term to expire June 30, 1995.

Sec. 26. Doris L. Lail of Lincoln County is appointed Cochairman of the North Carolina Commission on School Facility Needs for a term to expire June 30, 1995. Jimmie R. Hutchens of Yadkin County, Sharon G. Shelton of Moore County, William Eugene Wilson of Watauga County, and John H. Weatherly of Cleveland County are appointed to the North Carolina Commission on School Facility Needs for terms to expire June 30, 1995.

Sec. 27. David G. Olmstead of Wake County is appointed to the Board of Trustees of the Teachers' and State Employees' Retirement System for a term to expire June 30, 1993.

Sec. 28. Clyde T. Wood, Jr. of Cumberland County and M. Charles Mullen of Nash County are appointed to the North Carolina Housing Finance Agency Board of Directors for terms to expire June 30, 1993. These are the at-large categorical appointments. Donald B. Barnes of Wayne County is appointed to the North Carolina Housing Finance Agency Board of Directors for a term to expire June 30, 1995. This is the categorical appointment for someone with experience in savings and loan management.

Sec. 29. Sandra B. Grey of Cabarrus County is appointed to the State Board of Therapeutic Recreation Certification for a term to expire June 30, 1994. This is the categorical appointment for a public member.

Sec. 30. Thomas Richard Wright, Jr. of Wake County is appointed to the Property Tax Commission for a term to expire June 30, 1995.

Sec. 31. Johnny W. Shepherd of Lenoir County is appointed to the Teaching Fellows Commission for a term to expire June 30, 1995.

Sec. 32. Joseph A. Neisler, Jr. of Columbus County is appointed to the Wildlife Resources Commission for a term to expire April 24, 1993.

Sec. 33. Henry G. Williamson, Jr. of Wilson County is appointed to the State Banking Commission for a term to expire March 31, 1995.

Sec. 34. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 69

CHAPTER 715**AN ACT TO REGULATE THE TRANSMISSION OF MONEY
AND THE SALE OF CHECKS.**

The General Assembly of North Carolina enacts:

Section 1. The title of Article 16 of Chapter 53 of the General Statutes reads as rewritten:

~~"Sale of Checks Act.~~ Money Transmitters Act."

Sec. 1.1. G.S. 53-192 reads as rewritten:

"§ 53-192. *Citation of Article.*

This Article shall be known and may be cited as the ~~"Sale of Checks Act."~~ "Money Transmitters Act."

Sec. 2. G.S. 53-193 reads as rewritten:

" § 53-193. Definitions.

~~For the purpose of~~ The following definitions apply in this Article:

- ~~(1) 'Person' means any individual, partnership, association, joint stock association, trust or corporation;~~
- ~~(2) 'Licensee' means any person duly licensed by the Commissioner pursuant to this Article;~~
- ~~(3) 'Check' means any check, draft, money order or other instrument for the transmission or payment of money;~~
- ~~(4) 'Commissioner' means the Commissioner of Banks of the State of North Carolina.~~
- (1) Check. A check, draft, money order, or other instrument for the transmission or payment of money, including any instrument transmitted by wire or any other means.
- (2) Commissioner. The Commissioner of Banks of the State of North Carolina.
- (3) Licensee. A person duly licensed by the Commissioner under this Article.
- (4) Permissible Investment. An investment in any of the following:
 - a. Unencumbered cash.
 - b. Unencumbered investment securities that are obligations of the United States, its agencies, or instrumentalities.
 - c. Unencumbered obligations fully guaranteed as to principal and interest by the United States.
 - d. Unencumbered obligations of any state, municipality, or any political subdivision thereof.
 - e. Any other investments approved by the Commissioner.
- (5) Person. An individual, a partnership, an association, a joint stock company, a trust, or a corporation."

Sec. 3. G.S. 53-195 reads as rewritten:

" § 53-195. Exemptions.

Nothing in this Article shall apply to the sale or issuance of checks by:

- (1) Corporations organized under the general banking laws of this State any state where deposits are required to be insured by an agency of the federal government or under the general banking laws of the United States.
- (2) The government of the United States or any department or agency thereof.
- (3) Savings and loan associations, savings banks, industrial banks, and credit unions organized under the laws of this State any state where deposits are required to be insured by an agency of the federal government or under the laws of the United States.

- (4) Exempt entities which sell or issue checks through 'nonbank' agents or locations."

Sec. 4. G.S. 53-197 reads as rewritten:

" § 53-197. *Investigation fee.*

Each application for a license shall be accompanied by an investigation fee of five hundred dollars (\$500.00). ~~If the license is granted, the investigation fee shall be applied to the license fee for the first year.~~ No investigation fee shall be refunded."

Sec. 5. Article 16 of Chapter 53 of the General Statutes is amended by adding a new section to read:

" § 53-199.1. *Required investments; permissible investments.*

Every licensee under this Article shall have on hand permissible investments in an amount equal to the aggregate face value of all outstanding checks sold by the licensee for which the licensee is liable for payment. The requirements of this section may be waived by the Commissioner if a finding is made, upon examination of audited financial statements and other appropriate analysis, that the surety bond required by G.S. 53-198 is sufficient to cover the aggregate face value of all outstanding checks sold by the licensee."

Sec. 6. G.S. 53-202 reads as rewritten:

" § 53-202. *License fees.*

Each licensee shall pay to the Commissioner within five days after the issuance of the license, and annually thereafter on or before June 30 December 31 of each year, a license fee of ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000), plus an agent location fee for each location at which its checks are sold. The amount of the agent location fee shall be established by rule. For the year ending December 31, 1991, each licensee shall pay a license fee of five hundred dollars (\$500.00)."

Sec. 7. G.S. 53-203 reads as rewritten:

" § 53-203. *More than one location authorized; employees, agents and representatives.*

~~Each A licensee may conduct business at one or more locations within this State and through or by means of such employees, agents, subagents or representatives as such licensee may from time to time designate and appoint. State. A certificate must be posted in public view in each location disclosing the name of the issuer and citing the authority under which the issuer is operating. A licensee may conduct business through an employee or other person designated by the licensee. No license under this Article shall be required of any such employee, agent, subagent or representative person who is acting for or on behalf of a licensee hereunder in the sale of checks of which the licensee is the issuer, licensee. Each such agent, subagent or representative~~ A person representing a licensee shall upon demand

transfer and deliver to the licensee the proceeds of the sale of licensee's checks less the fees, if any, due ~~such agent, subagent or representative, that person.~~"

Sec. 8. Article 16 of Chapter 53 of the General Statutes is amended by adding a new section to read:

" § 53-203.1. Checks to bear name of issuer.

Each check issued or sold by a licensee, either directly or indirectly through a person representing the licensee, shall bear the name and either the address or the telephone number of the issuer clearly imprinted on either the check or another document delivered to the purchaser at the time of sale."

Sec. 9. G.S. 53-204 reads as rewritten:

" § 53-204. ~~Annual lists of locations and agents; annual financial statements; audits. Reporting requirements; audits.~~

(a) Each A licensee shall file with the Commissioner annually on or before ~~June 30~~ December 31 of each year a statement listing the locations of the offices of the licensee and the names and locations of the ~~agents or subagents~~ persons authorized by the licensee to engage in the sale of checks of which the licensee is the ~~issuer and~~ issuer. A licensee shall also file a statement correctly reflecting its net worth as of the close of its most recent fiscal ~~year, such year.~~ The statement of net worth ~~to~~ must be certified ~~to~~ by a certified public accountant satisfactory to the ~~Commissioner,~~ Commissioner and it must be filed no later than April 30 for the ~~preceding year.~~ A licensee shall file quarterly reports of agent activity with the Commissioner.

(b) The Commissioner may conduct or cause to be conducted an examination or audit of the books and records of any licensee at any ~~time or times he shall deem proper,~~ time when considered proper. The licensee must pay the cost of ~~such the~~ examination or ~~audit to be borne by the licensee,~~ audit. In lieu of an examination or audit, the Commissioner may accept an audit or examination report compiled by money transmitter regulators of another state. The refusal of access to ~~such the licensee's~~ books and records shall be cause for ~~the~~ revocation of the license."

Sec. 10. Article 16 of Chapter 53 of the General Statutes is amended by adding a new section to read:

" § 53-206.1. Rules.

The Banking Commission may adopt rules necessary to implement this Article."

Sec. 11. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 253

CHAPTER 716

AN ACT TO MAKE THE RECORDS AND INFORMATION USED IN CONNECTION WITH THE DEPARTMENT OF TRANSPORTATION'S BID ANALYSIS AND MANAGEMENT SYSTEM CONFIDENTIAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-28.5 reads as rewritten:

" § 136-28.5. Construction ~~diaries.~~ diaries; bid analysis and management system.

(a) Diaries kept in connection with construction or repair contracts entered into pursuant to G.S. 136-28.1 shall not be considered public records for the purposes of Chapter 132 of the General Statutes until the final estimate has been paid.

(b) Analyses generated by the Department of Transportation's Bid Analysis and Management System, including work papers, documents and the output of automated systems associated with the analyses of bids made by the Bid Analysis and Management System, are confidential and are not subject to the public records provisions of Chapter 132 of the General Statutes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 263

CHAPTER 717

AN ACT TO EXTEND THE PROPERTY TAX EXCLUSION FOR HISTORIC PRESERVATION PROPERTY TO INCLUDE LAND HELD AS A SITE TO WHICH AN HISTORIC BUILDING WILL BE MOVED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-275 is amended by adding a new subdivision to read:

"(29a) Land within an historic district held, by a nonprofit corporation organized for historic preservation purposes, for use as a future site for an historic structure that is to be moved to the site from another location. Property may be classified under this subdivision for no more than five years. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the

records of the taxing unit or units as deferred taxes and shall be payable five years from the fiscal year the exclusion is first claimed unless an historic structure is moved onto the site during that time. If an historic structure has not been moved to the site within five years, then deferred taxes for the preceding five fiscal years shall immediately be payable, together with interest as provided in G.S. 105-360 for unpaid taxes that shall accrue on the deferred taxes as if they had been payable on the dates on which they would originally become due. All liens arising under this subdivision are extinguished upon either the payment of any deferred taxes under this subdivision or the location of an historic structure on the site within the five-year period allowed under this subdivision."

Sec. 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 1991. Notwithstanding the provisions of G.S. 105-282.1(a), an application for the benefit provided in this act for the 1991-92 tax year shall be considered timely if it is filed on or before September 1, 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 270

CHAPTER 718**AN ACT TO INCREASE THE CAREER LIMITATION FOR EMPLOYER-APPROVED EDUCATIONAL LEAVES OF ABSENCE.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-8(b) reads as rewritten:

"(b) Annuity Savings Fund. -- The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to any payments from the annuity savings fund shall be made as follows:

- (1) Prior to the first day of July, 1947, each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his actual compensation; and the employer also shall deduct four per centum (4%) of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the State, from salaries other

than the appropriations from the State of North Carolina. On and after such date the rate so deducted shall be five per centum (5%) of actual compensation except that, with respect to each member who is eligible for coverage under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of Article 2 of Chapter 135 of Volume 3B of the General Statutes, as amended, and with respect to members covered under G.S. 135-27, with such coverage retroactive to January 1, 1955, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his earnable compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the Board of Trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the Board of Trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955, and December 1, 1955, to be transferred into the contribution fund established under G.S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under Article 2, Chapter 135 of Volume 3B of the General Statutes as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required.

Notwithstanding the foregoing, effective July 1, 1963, with respect to the period of service commencing on July 1, 1963, and ending December 31, 1965, the rates of such deduction shall be four per centum (4%) of the portion of compensation not in excess of forty-eight hundred dollars (\$4,800) and six per centum (6%) of the portion of compensation in excess of forty-eight hundred dollars (\$4,800); and with respect to the period of service commencing January 1, 1966, and ending June 30, 1967, the rate of such deductions shall be four per centum (4%) of the portion of compensation not in excess of fifty-six hundred dollars (\$5,600) and six per centum (6%) of the

portion of compensation in excess of fifty-six hundred dollars (\$5,600); and with respect to the period of service commencing July 1, 1967, and ending June 30, 1975, the rate of such deductions shall be five per centum (5%) of the portion of compensation not in excess of fifty-six hundred dollars (\$5,600) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars (\$5,600). Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.

Notwithstanding the foregoing, effective July 1, 1975, with respect to the period of service commencing on July 1, 1975, the rate of such deductions shall be six per centum (6%) of the compensation received by any member. Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.

- (2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Chapter. The employer shall certify to the Board of Trustees on each and every payroll or in such other manner as the Board of Trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon, to the individual account of the member from whose compensation said deduction was made.
- (3) Each board of education of each county and each board of education of each city, and the employer in any department, agency or institution of the State, in which any teacher receives compensation from sources other than appropriations of the State of North Carolina shall deduct from the salaries of these teachers paid from sources other than State appropriations an amount equal to that deducted from the salaries of the teachers whose salaries are paid

from State funds, and remit this amount to the State Retirement System. City boards of education and county boards of education in each and every county and city which has employees compensated from other than the State appropriation shall pay to the State Retirement System the same per centum of the compensation that the State of North Carolina pays and shall transmit same to the State Retirement System monthly; Provided, that for the purpose of enabling the boards of education to make such payment, the tax-levying authorities are hereby authorized, empowered and directed to provide the necessary funds therefor. In case the salary is paid in part from State funds and in part from local funds, the local authorities shall not be relieved of providing and remitting the same per centum of the salary paid from local funds as is paid from State funds. In case the entire salary of any teacher, as defined in this Chapter, is paid from county or local funds, the county or city paying such salary shall provide and remit to the Retirement System the same per centum that would be required if the salary were provided by the State of North Carolina.

- (4) In addition to contributions deducted from compensation as hereinbefore provided, subject to the approval of the Board of Trustees, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he previously withdrew therefrom, as provided in this Chapter. Such amounts so redeposited shall become a part of his accumulated contributions as if such amounts had initially been contributed within the calendar year of such redeposit. In no event, however, shall any member be permitted to redeposit any amount withdrawn after July 1, 1959, except as provided for in G.S. 135-4(e).
- (5) The Board of Trustees may approve the purchase of creditable service by any member for leaves of absence or for interrupted service to an employer for the sole purpose of acquiring knowledge, talents, or abilities and to increase the efficiency of service to the employer. This approval shall be made prior to the purchase of the creditable service, is limited to a career total of ~~four~~ six years for each member, and may be obtained in the following manner:
 - a. Approved leave of absence. -- Where the employer grants an approved leave of absence, a member may make monthly contributions to the annuity savings fund on the basis of compensation the member was earning immediately prior to such leave of absence. The

employer shall make monthly contributions equal to the normal and accrued liability contribution on such compensation or, in lieu thereof, the member may pay into the annuity savings fund monthly an amount equal to the employer's normal and accrued liability contribution when the policy of the employer is not to make such payment.

- b. No educational leave policy. -- Where the employer has a policy of not granting educational leaves of absence or the member has unsuccessfully petitioned for leave of absence and the member has interrupted service for educational purposes, the member may make monthly contributions into the annuity savings fund in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.
- c. Educational program prior to July 1, 1981. -- Creditable service for leaves of absence or interrupted service for educational purposes prior to July 1, 1981, may be purchased by a member, before or after retirement, who returned as a contributing employee or teacher within 12 months after completing the educational program and completed 10 years of subsequent membership service, by making a lump sum payment into the annuity savings fund equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus a fee to be determined by the Board of Trustees.

Payments required to be made by the member and/or the employer under subparagraphs a or b are due by the 15th of the month following the month for which the service credit is allowed and payments made after the due date shall be assessed a penalty, in lieu of interest, of one percent (1%) per month or fraction thereof the payment is made beyond the due date; provided, that these payments shall be made prior to retirement and provided further, that if the member did not become a contributing member within 12 months

after completing the educational program and failed to complete three years of subsequent membership service, except in the event of death or disability, any payment made by the member including penalty shall be refunded with regular interest thereon and the service credits cancelled prior to or at retirement.

- (6) The contributions of a member, and such interest as may be allowed thereon, paid upon his death or withdrawn by him as provided in this Chapter, shall be paid from the annuity savings fund, and any balance of the accumulated contributions of such a member shall be transferred to the pension accumulation fund."

Sec. 2. This act is effective retroactively to January 1, 1991, and applies to employer-approved leaves of absence granted on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 324

CHAPTER 719

AN ACT TO CLARIFY THE STUDENT ASSIGNMENT LAW AND
TO PROVIDE FOR THE ASSIGNMENT OF CHILDREN OF
HOMELESS INDIVIDUALS AND OF HOMELESS CHILDREN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-365 is repealed.

Sec. 2. G.S. 115C-366, as amended by Chapter 407 of the 1991 Session Laws, reads as rewritten:

" § 115C-366. *Assignment of student to a particular school.*

(a) All ~~pupils~~ students under the age of 21 years who are domiciled in a school ~~district or attendance area, administrative unit~~ who have not been removed from school for cause, or who have not obtained a high school diploma, ~~shall be~~ are entitled to all the privileges and advantages of the public schools of such ~~district or attendance area in such school buildings~~ to which they are assigned by the local boards of education; ~~education. Provided, that wherever pupils from nontax units, districts, or attendance areas, are assigned to a school in a tax unit, district, or attendance area, the assignment shall be for only the current school year, unless satisfactory agreements are reached between all units, districts, or attendance areas concerned; Provided, further, that pupils domiciled in one local school administrative unit may be assigned to a school located in another local school administrative unit upon such terms and conditions as may be agreed in writing between the boards of education of the local school~~

~~administrative units involved and entered upon the official records of such boards: Provided, further, that the~~ The assignment of pupils students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which said pupils the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in such that local school administrative unit or district: ~~Provided, further, the boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education, district.~~

~~Unless otherwise assigned by the local board of education, the following pupils are entitled to attend the schools in the district or attendance area in which they are domiciled: Provided, the superintendent, or the principal with the approval of the superintendent, of the local school administrative unit may, in his discretion, prohibit the enrollment of or remove from school any pupil who has attained the age of 21 years:~~

~~(1) All persons of the district or attendance area who have not completed the prescribed course for graduation in the high school,~~

~~(2) All pupils whose parents have recently moved into the unit, district, or attendance area for the purpose of making their legal domicile in the same,~~

~~(3) Any pupil living with either father, mother or guardian who has made his permanent home within the district,~~

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents shall be considered legal residents of the local school administrative unit in which the institution is located. These children shall be deemed to qualify for admission to the public schools of the local school administrative unit as provided in this section. This subsection shall apply to foster homes and group homes.

(a2) It is the policy of the State that every child of a homeless individual and every homeless child have access to a free, appropriate public education on the same basis as all children who are domiciled in this State. The local board of education having jurisdiction where the child is actually living shall enroll the child in the school administrative unit where the child is actually living. In no event shall the child be denied enrollment because of uncertainty regarding his domiciliary status, regardless of whether the child is living with the homeless parents or has been temporarily placed elsewhere by the parents. The local board shall not charge the homeless child, as

defined in this subsection, tuition for enrollment. The child's parent, guardian, or person standing in loco parentis to the child, may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the child, and this determination shall be binding on the local board of education, subject to judicial review. As used in this subsection, the term 'homeless' refers to an individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.

(b) Each local board of education is hereby authorized and directed to provide for the assignment shall assign to a public school of each student qualified for assignment under this section, child residing within the local school administrative unit who is qualified under the laws of this State for admission to a public school. Except as otherwise provided in G.S. 115C-366(b), 115C-367 to 115C-370 and 115C-116, Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final. A child residing in one local school administrative unit may be assigned either with or without the payment of tuition to a public school located in another local school administrative unit upon such terms and conditions as may be agreed in writing between the boards of education of the local school administrative units involved and entered upon the official records of such boards. No child shall be enrolled in or permitted to attend any public school other than the public school to which the child has been assigned by the appropriate board of education. In exercising the authority conferred by this subsection, each local board of education shall make assignments of pupils to public schools so as to provide for the orderly and efficient administration of the public schools, and provide for the effective instruction, health, safety, and general welfare of the pupils. Each board of education may adopt such reasonable rules and regulations as in the opinion of the board are necessary in the administration of G.S. 115C-366(b), 115C-367 to 115C-370 and 115C-116.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to his parent's or guardian's

service in the General Assembly, other than the local school administrative unit in which he is domiciled, is entitled to attend school in the local school administrative unit of that residence as if he were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association."

Sec. 3. This act is effective upon ratification and applies to all school years beginning with the 1991-92 school year.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 333

CHAPTER 720

AN ACT TO MAKE TECHNICAL AMENDMENTS TO AND CORRECTIONS IN THE INSURANCE LAWS.

The General Assembly of North Carolina enacts:

Section 1. Article 64 of Chapter 58 of the General Statutes is amended by adding the following section:

"§ 58-64-85. Other licensing or regulation.

Nothing in this Article affects the authority of the Department of Human Resources or any successor agency otherwise provided by law to license or regulate any health service facility or domiciliary service facility."

Sec. 2. Sections 3 and 5 of Chapter 758 and Section 45 of Chapter 1024 of the 1989 Session Laws are repealed.

Sec. 3. G.S. 58-71-90 reads as rewritten:

"§ 58-71-90. Appeal from denial, suspension, revocation or refusal to renew license.

Any applicant for issuance or renewal of a license as a bail bondsman or runner whose application has been denied or any bail bondsman or runner whose license shall have has been suspended or revoked, or renewal thereof denied, shall have the right of revoked may appeal from such final order of the Commissioner thereon the denial, suspension, or revocation pursuant to the provisions of G.S. 58-2-75, Article 4 of Chapter 150B of the General Statutes."

Sec. 4. The following sections and their catch lines are amended by substituting "Commissioner" for "Commissioner of Insurance" and by substituting "Department" for "Department of Insurance" wherever those words appear: G.S. 58-2-10, 58-2-35, 58-2-115, 58-2-125, 58-2-150, 58-2-185, 58-2-200, 58-3-85, 58-3-90, 58-3-140, 58-5-30, 58-5-60, 58-5-65, 58-5-70, 58-5-75, 58-5-80, 58-5-90, 58-5-95, 58-5-110, 58-6-1, 58-6-5, 58-6-10, 58-6-15, 58-6-20, 58-7-1, 58-7-10, 58-7-35, 58-7-95(q), (r), 58-7-105, 58-7-110, 58-7-115, 58-7-120, 58-7-135, 58-8-5(3), 58-8-45, 58-9-5(2), and (3), 58-9-10, 58-10-1, 58-10-5, 58-11-1, 58-11-5, 58-11-15, 58-11-20, 58-11-25, 58-11-30, 58-12-5, 58-12-10, 58-12-20, 58-14-15, 58-16-15, 58-16-20(b), 58-16-25, 58-16-30, 58-16-35(b)(1), and (2), 58-16-45, 58-18-5, 58-18-10, 58-18-15, 58-18-20, 58-24-45(b) through (e), 58-24-50(b) through (d), 58-24-60, 58-24-65(a), (b) and (e), 58-24-70, 58-24-90(f), 58-24-120(c), and (d), 58-24-125, 58-24-130, 58-24-135, 58-24-140, 58-24-145(a), (b), (c), (e), and (f), 58-24-150(a), 58-24-155, 58-24-170, 58-24-175, 58-24-185(e), 58-25-25, 58-25-30, 58-25-50, 58-26-5, 58-26-10, 58-27-1, 58-27-10, 58-27-15, 58-28-1, 58-28-10, 58-28-15, 58-28-40(b), 58-29-1(a), 58-29-20(a), 58-31-5, 58-31-15, 58-31-20, 58-31-25, 58-31-45, 58-32-1, 58-33-85(a), 58-35-30(b), 58-36-5(a), (b), and (d), 58-37-35(d), and (g)(6), 58-37-40(b), 58-45-5(7), 58-45-50, 58-45-60, 58-45-75, 58-46-20(a), 58-50-10, 58-50-55(b), and (c), 58-50-65(b), 58-50-70, 58-51-1, 58-51-35(b), 58-51-95(a), 58-52-20, 58-58-125, 58-59-5, 58-59-10, 58-59-15, 58-59-20, 58-59-25, and 58-59-30.

Sec. 5. The following sections and their catch lines are amended by substituting "Commissioner" for "Insurance Commissioner" and by substituting "Department" for "Insurance Department" wherever those words appear: G.S. 58-2-1, 58-2-35, 58-3-65, 58-3-150(a), 58-18-5, 58-29-20(b), and 58-35-95.

Sec. 6. G.S. 58-37-1(2), 58-37-70, 58-38-15(2), 58-38-35(b), 58-40-5(2), 58-45-5(3), 58-47-5(2), 58-48-20(3), 58-57-5(1), and 58-63-5(1) are repealed.

Sec. 7. G.S. 58-3-145 is amended by substituting "section" for "Article".

Sec. 8. G.S. 58-64-35(e), as contained in Section 6 of Chapter 196 of the 1991 Session Laws, is amended by substituting "subdivision (a)(2) of this section" for "G.S. 58-64-35(a)(2)(i)".

Sec. 9. G.S. 58-7-130 is amended by substituting "G.S. 58-7-125" for "the preceding section".

Sec. 10. G.S. 58-8-20 is amended by substituting "Chapter" for "Subchapter".

Sec. 11. G.S. 58-9-5(4) is amended by substituting "55-13-1 to 55-13-3, 55-13-20 to 55-13-26, 55-13-28, 55-13-30, and 55-13-31" for "55-113(d), (e), (f), (g) and (h)".

Sec. 12. G.S. 58-9-10 is amended by substituting "55-1-20, 55-1-23, and 55-1-25" for "55-4".

Sec. 13. G.S. 58-11-15 is amended by substituting "G.S. 58-11-10" for "the foregoing section".

Sec. 14. G.S. 58-12-1 is amended by substituting "Article 7 of this Chapter" for "the preceding Article".

Sec. 15. G.S. 58-15-5(3) is amended by substituting "58-1-5(9)" for "58-1-5(7)".

Sec. 16. G.S. 58-16-15 is amended by substituting "Article 5" for "Article 4".

Sec. 17. G.S. 58-19-15(g) is amended before "amount" by substituting "an" for "a".

Sec. 18. G.S. 58-19-30(b)(3) is amended before "insurer's" by substituting "the" for "the the".

Sec. 19. G.S. 58-24-125(a), 58-58-50(c), and 58-58-55(e) are amended by substituting "NAIC" for "National Association of Insurance Commissioners".

Sec. 20. G.S. 58-24-140(c) is amended by substituting "58-24-170" for "Section 35".

Sec. 21. G.S. 58-24-175 is amended by substituting "G.S. 58-2-75" for "the APA".

Sec. 22. G.S. 58-33-130(b) is amended by substituting "limited representatives" for "limited field representatives".

Sec. 23. G.S. 58-30-175(9) is amended by substituting "67" for "64".

Sec. 24. G.S. 58-46-10(a) is amended by substituting "105-278.1 through 105-278.8" for "105-296 and 105-297".

Sec. 25. G.S. 58-45-35(d) is amended by substituting "33" for "45".

Sec. 26. G.S. 58-46-40 is amended by substituting "this Chapter" for "Chapter 58".

Sec. 27. G.S. 58-48-60(b) is amended by substituting "an NAIC" for "a National Association of Insurance Commissioners".

Sec. 28. G.S. 58-50-1 is amended by substituting "Articles 50 through 55 of this Chapter" for "this Subchapter".

Sec. 29. G.S. 58-50-5(c), 58-50-15, and 58-50-30 are amended by substituting "Articles 50 through 55" for "Articles 47 and 49 through 53".

Sec. 30. G.S. 58-57-20 is amended by substituting "58-57-50" for "58-351".

Sec. 31. G.S. 58-58-55(d) is amended before "least" by substituting "at" for "a".

Sec. 32. G.S. 58-58-125 is amended by substituting "143B-472 through 143B-472.28" for "58-224 to 58-241".

Sec. 33. G.S. 58-63-50 is amended by substituting "the Superior Court of" for "a court of competent jurisdiction in".

Sec. 34. G.S. 58-51-85 is amended between "policy" and "group" by substituting "of" for "or".

Sec. 35. G.S. 58-51-15(e) and (g) are amended by substituting "Articles 50 through 55 of this Chapter" for "this Subchapter".

Sec. 36. G.S. 58-67-50(e) is amended by substituting "America" for "American".

Sec. 37. G.S. 58-50-25 and G.S. 58-65-35 are amended by substituting "90-171.23" for "90-162".

Sec. 38. G.S. 58-65-60(e)(4) and G.S. 58-67-85(e) are amended by substituting "corporation under Articles 1 through 67 of this Chapter" for "Chapter 58, Articles 1 through 67 corporation".

Sec. 39. G.S. 58-64-1(6) is amended before "life care" by substituting "or" for "of".

Sec. 40. G.S. 58-67-5(e) is amended before "hospitalization" by substituting "or" for "of".

Sec. 41. G.S. 58-67-10(d)(1) and G.S. 58-71-50(6) are amended by substituting "this Article" for "this Chapter".

Sec. 42. G.S. 58-38-35(a)(2), 58-50-65, and 58-50-70 are amended by substituting "Articles 50 through 55" for "Articles 47 and 50 through 54".

Sec. 43. G.S. 58-21-100(a) is amended by substituting "58-16-30" for "58-16-35".

Sec. 44. G.S. 58-55-25 is amended by substituting "d" for "(d)".

Sec. 45. G.S. 58-24-185(a)(4) and G.S. 58-55-30(b)(2) are amended by substituting "; or" for the period.

Sec. 46. G.S. 58-68-10(b)(11) is amended by substituting "than" for "that".

Sec. 47. G.S. 58-78-1(a)(1) is amended by substituting "Firemen's" for "Fireman's".

Sec. 48. G.S. 58-86-55 is amended by substituting "58-86-30" for "58-36-30".

Sec. 49. G.S. 14-399(d) is amended by substituting "58-36-65" for "58-30.4".

Sec. 50. G.S. 58-2-115 is amended before "Department" by deleting "State Insurance".

Sec. 51. G.S. 58-3-150(a) is amended after "Commissioner" by deleting "of Insurance of North Carolina".

Sec. 52. G.S. 58-5-100 is amended after "Commissioner" by deleting "of Insurance in this State".

Sec. 53. G.S. 58-7-35 is amended after "Commissioner" by deleting "of Insurance of the State".

Sec. 54. G.S. 58-14-15 is amended before "Commissioner" by deleting "North Carolina".

Sec. 55. G.S. 58-24-185(3) is amended at the end by deleting "or".

Sec. 56. G.S. 58-28-15 is amended after "G.S. 58-16-35" by deleting ", known as the 'Unauthorized Insurers Process Act'".

Sec. 57. G.S. 58-29-20(a) is amended after "58-29-10" by deleting "hereof".

Sec. 58. G.S. 58-45-25 is amended after "G.S. 58-45-10" by deleting "of this Article".

Sec. 59. G.S. 58-45-30 is amended after "G.S. 58-45-1" by deleting "of this Article".

Sec. 60. G.S. 58-52-25 is amended by deleting "North Carolina Insurance".

Sec. 61. G.S. 58-58-65 is amended by deleting "of Insurance in this State".

Sec. 62. G.S. 58-63-20 is amended by deleting "of this Article".

Sec. 63. G.S. 58-63-50 is amended by deleting "pursuant to G.S. 58-2-70".

Sec. 64. G.S. 58-51-50(d)(2) and (3), 58-65-75(d)(2) and (3), and 58-67-70(d)(2) and (3) are amended by deleting "[or]".

Sec. 65. G.S. 20-310(g) reads as rewritten:

"(g) Nothing in this section shall apply:

- (1) If the insurer has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has manifested such intention by any other means, including the mailing by first-class mail of a premium notice or expiration notice, and the insured has failed to pay the required premium prior to the premium due date:

- (2) If the named insured has notified in writing the insurer or its agent that he wishes the policy to be canceled or that he does not wish the policy to be ~~renewed;~~ renewed.
- (3) ~~To any policy of automobile insurance which has been in effect less than 60 days, unless it is a renewal policy, or to any policy which has been written or written and renewed for a consecutive period of 48 months or longer."~~

Sec. 66. G.S. 58-11-1 is amended by deleting "under this department".

Sec. 67. G.S. 58-3-25(c) is amended in the second sentence immediately after "of G.S." by inserting "58-3-120, 58-33-80, 58-58-35, and".

Sec. 68. G.S. 58-30-215(a) is amended before "the Court" by inserting "as".

Sec. 69. G.S. 58-67-10(b)(1) is amended before "continue" by inserting "to".

Sec. 70. G.S. 20-310(k) is amended by substituting "subsection (f)" for "subsection (e)".

Sec. 71. G.S. 58-3-95 is repealed.

Sec. 72. G.S. 58-52-5 is amended by deleting the last sentence.

Sec. 73. G.S. 58-39-95(a) is amended by deleting "knowing" and by rewriting the remainder of the subsection after "may" to read: "levy a civil penalty under G.S. 58-2-70."

Sec. 74. Section 1 of Chapter 846 of the 1981 Session Laws is amended in G.S. 58-390(a) by substituting "from an individual" for "form an individual".

Sec. 75. G.S. 58-33-25(d1) reads as rewritten:

"(d1) A life, accident and health insurance license shall authorize an agent to sell variable contracts, provided that the licensee satisfies the Commissioner that he has ~~successfully completed Part I, NASD Securities Examination, or an alternative examination satisfactory to the Commissioner; and that he has complied with all securities registration requirements under State and federal law,~~ met the NASD requirements of the Secretary of State of North Carolina."

Sec. 76. G.S. 55A-3(a)(3) is amended by substituting "Article 65 of Chapter 58" for "Chapter 57".

Sec. 77. The last paragraph of G.S. 153A-351(b) is amended by substituting "Article 9C" for "Article 9B".

Sec. 78. G.S. 130A-148(g) is amended by substituting "Chapter 58 of the General Statutes" for "G.S. Chapter 58".

Sec. 79. The first paragraph of G.S. 58-65-95 is amended by substituting "corporation subject to this Article" for "hospital service corporation".

Sec. 80. G.S. 168-10 is amended in the penultimate and final sentences by deleting "Chapter 57 or" and "Chapter 57 and" respectively.

Sec. 81. G.S. 58-51-55 reads as rewritten:
" § 58-51-55. No discrimination against the mentally ill and chemically dependent.

(a) As used in this section, the term:

- (1) 'Mental illness' has the same meaning as defined in G.S. 122C-3(21); and
- (2) 'Chemical dependency' has the same meaning as defined in G.S. 58-51-50

with a diagnosis found in the Diagnostic and Statistical Manual of Mental Disorders DSM-3-R or the International Classification of Diseases ICD/9/CM, or a later edition of those manuals.

(b) No insurance company licensed in this State ~~pursuant to~~ under the provisions of Articles 1 through 64 of this Chapter shall, solely because an individual to be insured has or had a mental illness or chemical dependency:

- (1) Refuse to issue or deliver to that individual any policy ~~(regardless of whether any of such policies shall be defined as individual, family, group, blanket, franchise, industrial or otherwise)~~ that affords benefits or coverages for any medical treatment or service for physical illness or injury;
- (2) Have a higher premium rate or charge for physical illness or injury coverages or benefits for that individual; or
- (3) Reduce physical illness or injury coverages or benefits for that individual.

(c) Nothing in this section prevents any insurance company from excluding from coverage any physical illness or injury or mental illness or chemical dependency which has existed previous to coverage of the individual by the insurance company or from refusing to issue or deliver to that individual any policy because of the underwriting of any physical condition whether or not related to mental illness or chemical dependency.

(d) This section applies only to group health insurance contracts covering 20 or more employees."

Sec. 82. G.S. 58-65-90 is amended by adding a new subsection to read:

"(d) This section applies only to group contracts covering 20 or more employees."

Sec. 83. G.S. 58-67-75 is amended by adding a new subsection to read:

"(d) This section applies only to group contracts covering 20 or more employees."

Sec. 84. G.S. 58-55-15 reads as rewritten:
 "§ 58-55-15. *Scope.*

This Article applies to ~~new and renewed~~ long-term care insurance policies ~~delivered or issued for delivery in this State on or after September 1, 1987, State.~~ This Article ~~is does not intended to~~ supersede the obligations of any person subject to its provisions to comply with other applicable laws and rules if ~~such~~ those laws and rules do not conflict with this Article. The laws and rules established to govern ~~the medicare~~ Medicare supplement insurance policies shall not apply to long-term care insurance. A policy that is not advertised, marketed, or offered as long-term care insurance or nursing home insurance is not subject to this Article."

Sec. 85. Section 7 of Chapter 207 of the 1989 Session Laws reads as rewritten:

"Sec. 7. This act applies to all ~~new and renewal~~ long-term care insurance policies, as defined in ~~G.S. 58-543(4) and (5), 58-55-20(4) and (5),~~ that are delivered or issued for delivery in this State on and after the effective date of this act."

Sec. 86. G.S. 58-55-30(d) and (d1) are each amended by substituting "Except as provided in G.S. 58-55-5," for "Effective October 1, 1989,".

Sec. 87. G.S. 58-11-20 is amended in the last sentence by substituting "six adjacent counties" for "three adjacent counties".

Sec. 88. Chapter 775 of the 1989 Session Laws is amended by renumbering "Sec. 6." as "Sec. 7." and by adding a new Section 6 to read:

"Sec. 6. This act does not apply to noncancelable disability insurance as defined in G.S. 58-7-15(3)b."

Sec. 89. Section 7 of Chapter 196 of the 1991 Session Laws reads as rewritten:

"Sec. 7. ~~This act is effective upon ratification.~~ G.S. 58-64-20(a)(12), as amended by Section 3 of this act, and Section 5 of this act become effective March 1, 1992. The remainder of this act is effective upon ratification."

Sec. 90. G.S. 58-36-75(c) is amended in the table by rewriting the reference to "20-141(a)" as follows:

"20-141(a)

Only driving at least 11 miles per hour over the posted speed limit ~~or driving in excess of the speed limit established by the State Department of Transportation under G.S. 20-141(d)(2)"~~

Sec. 91. G.S. 58-57-40(h) reads as rewritten:

"(h) In addition to the premium rate authorized, a charge may also be made for a nonrefundable origination fee per credit life insurance transaction as set forth below:

Insured Indebtedness	Fee Permitted
less than \$250.00	none
\$250.00 or more but less than \$500.00	\$1.00
more than \$500.00	\$2.00
<u>\$500.00 or more</u>	<u>\$2.00</u>

No third or subsequent origination fee may be charged in connection with a third or subsequent refinancing within any twelve-month period."

Sec. 92. G.S. 58-3-165(k), as enacted by Senate Bill 342 of the 1991 General Assembly, is amended by inserting the following language between "this section," and "the receiver": "and the insurer suffered any loss or damage therefrom,".

Sec. 93. G.S. 58-62-21(d)(2), as enacted by Senate Bill 342 of the 1991 General Assembly, is amended by substituting "benefits," for "benefit,".

Sec. 94. G.S. 58-62-36(e), as enacted by Senate Bill 342 of the 1991 General Assembly, is amended by inserting the following language immediately after "subdivision (b)(2) or (d)(4)": "of this section".

Sec. 95. Section 90 of this act becomes effective January 1, 1992, and applies to offenses occurring on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 338

CHAPTER 721

AN ACT TO RAISE MISCELLANEOUS FEES COLLECTED BY THE DEPARTMENT OF INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-27-10 reads as rewritten:

"§ 58-27-10. *Licenses.*

Any domestic land mortgage company, or title insurance company, wishing to do business under the provisions of this Article upon making written application and submitting proof satisfactory to the Commissioner of Insurance that its business, capital and other qualifications comply with the provisions of this Article, upon paying to the ~~Commissioner of Insurance~~, Commissioner, the sum of ~~two hundred dollars (\$200.00)~~ five hundred dollars (\$500.00) as a license

fee and all other fees assessed against such company may be licensed to do business in this State under the provisions of this Article until the first day of the following July, and may have its license renewed for each year thereafter so long as it complies with the provisions of this Article and such rules and regulations as may be promulgated adopted by the ~~Commissioner of Insurance, Commissioner~~. For each such renewal such company shall pay to the Commissioner of Insurance the sum of ~~two hundred dollars (\$200.00)~~, five hundred dollars (\$500.00), and all other fees assessed against such company and such renewal shall continue in force and effect until a new license be issued or specifically refused, unless revoked for good cause. The ~~Commissioner of Insurance, Commissioner~~, or any person appointed by him, shall have the power and authority to make such rules and regulations and examinations not inconsistent with the provisions of this Article, as may be in his discretion necessary or proper to enforce the provisions hereof and secure compliance with the terms of this Article. For any examination made hereunder the Commissioner of Insurance shall charge the land mortgage companies or title insurance companies examined with the actual expense of such examination."

Sec. 2. G.S. 58-69-10 reads as rewritten:

" § 58-69-10. *Applications for licenses: fees: bonds or deposits.*

Licenses hereunder shall be obtained by filing written application therefor with the Commissioner in such form and manner as the Commissioner shall require. As a prerequisite to issuance of a license:

- (1) The applicant shall furnish to the Commissioner such data and information as the Commissioner may deem reasonably necessary to enable him to determine, in accordance with the provisions of G.S. 58-69-15, whether or not a license should be issued to the applicant.
- (2) If the applicant is a motor club it shall be required to pay to the Commissioner ~~an a nonrefundable annual license fee of two hundred dollars (\$200.00)~~ three hundred dollars (\$300.00) and to deposit or file with the Commissioner a bond, in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State, in the amount of fifty thousand dollars (\$50,000), or securities of the type hereinafter specified in the amount of fifty thousand dollars (\$50,000), pledged to or made payable to the State of North Carolina and conditioned upon the full compliance by the applicant with the provisions of this Article and the regulations and orders issued by the Commissioner pursuant thereto, and upon the good faith

performance by the applicant of its contracts for motor club services.

- (3) If the applicant is a branch or district office of a motor club licensed under this Article it shall pay to the Commissioner a nonrefundable license fee of ~~twenty dollars (\$20.00)~~, fifty dollars (\$50.00).
- (4) If the applicant is a franchise motor club it shall pay to the Commissioner ~~an~~ a nonrefundable annual license fee of ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00) and shall deposit or file with the Commissioner a bond, in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State, in the amount of fifty thousand dollars (\$50,000), or securities of the type hereinafter specified in the amount of fifty thousand dollars (\$50,000), pledged to or made payable to the State of North Carolina and conditioned upon the full compliance by the applicant with the provisions of this Article and the regulations and orders issued by the Commissioner pursuant thereto and upon the good faith performance by the applicant of its contracts for motor club services.
- (5) Any applicant depositing securities under this section shall do so in the form and manner as prescribed in Article 5 of this Chapter, and the provisions of Article 5 of this Chapter, shall be applicable to securities pledged under this Article."

Sec. 3. G.S. 58-70-35 reads as rewritten:

" § 58-70-35. *Application fee; issuance of permit; contents and duration.*

(a) Upon the filing of the application and information ~~hereinbefore required,~~ required by this Article, the Commissioner ~~may require the applicant to~~ shall pay a nonrefundable fee of five hundred dollars (\$500.00), and no permit may be issued until this fee is paid. ~~If the application is denied, the Commissioner shall retain fifty dollars (\$50.00) of the application fee and return the remainder to the applicant. The fifty dollars (\$50.00) so retained upon applications not granted, and the full fee of five hundred dollars (\$500.00) upon the applications granted.~~ Fees collected under this subsection shall be used in paying the expenses incurred in connection with the consideration of such applications and the issuance of such permits.

(b) Each permit shall state the name of the applicant, his place of business, and the nature and kind of business in which he is engaged. The Commissioner shall assign to the permit a serial number for each year, and each permit shall be for a period of one year, beginning with July 1 and ending with June 30 of the following year.

(c) A permit is assignable or transferable only if the assignee or transferee qualifies under the provisions of this Article. Upon any

change in ownership of a permittee, if a sole proprietorship or partnership, or upon a change in ownership of more than fifty percent (50%) of the shares or voting rights of a corporate permittee, a permit issued to a permittee is void unless within 30 days of the change of ownership the new owner or owners have satisfied the Commissioner that he or they qualify for a permit under this Article, and he or they maintain a bond in accordance with and in the amount required for a renewal bond under G.S. 58-70-20."

Sec. 4. G.S. 58-71-55 reads as rewritten:

" § 58-71-55. *License fees.*

A nonrefundable license fee of ~~sixty dollars (\$60.00)~~ one hundred dollars (\$100.00) shall be paid to the Commissioner with each application for license as a professional bondsman and a license fee of ~~twenty dollars (\$20.00)~~ sixty dollars (\$60.00) shall be paid to the Commissioner with each application for license as a runner."

Sec. 5. G.S. 58-71-70 reads as rewritten:

" § 58-71-70. *Examination; fees.*

Except as hereinafter provided, an applicant for license to be a professional bondsman or runner shall be required to appear in person and take a written examination prepared by the Commissioner testing his ability and qualifications. Each applicant shall become eligible for examination 30 days after the date the application is received by the Commissioner. Examinations shall be held at such time and place as designated by the Commissioner, and the applicant shall be given notice of such time and place not less than 15 days prior to taking the examination. The fee for such examination shall be ~~fifteen dollars (\$15.00)~~ twenty-five dollars (\$25.00) for professional bondsmen and ~~ten dollars (\$10.00)~~ twenty-five dollars (\$25.00) for runners. These examination fees are nonrefundable. The failure of an applicant to pass an examination shall not preclude him from taking subsequent examinations; provided, however, that at least one year must intervene between examinations.

~~No person shall be required to submit to examination to obtain license as a professional bondsman if he is now licensed by the Commissioner of Insurance or the Secretary of Revenue and is performing the functions of a bondsman on the taking effect of this Article, and no person shall be required to submit to examination to obtain license as a runner if he is performing the functions of a runner on the taking effect of this Article."~~

Sec. 6. G.S. 58-71-75 reads as rewritten:

" § 58-71-75. *Renewal of licenses; fees.*

A renewal license shall be issued by the Commissioner to a licensee who has continuously maintained his license in effect without further examination upon the payment of a renewal fee of ~~ten dollars (\$10.00)~~

sixty dollars (\$60.00) in case of runners and ~~thirty dollars (\$30.00)~~ one hundred dollars (\$100.00) in case of professional bondsmen, but such licensees shall in all other respects be required to comply with and be subject to the provisions of this Article. After the receipt of such licensee's application for renewal, the current license shall continue in effect until the renewal license is issued or denied for cause."

Sec. 7. G.S. 58-33-125(c) reads as rewritten:

"(c) Any person not registered who is required by law or administrative rule to secure a license shall, upon application for registration, pay to the Commissioner a fee of thirty dollars (\$30.00). In the event additional licensing for other kinds of insurance is requested, a fee of ~~twenty dollars (\$20.00)~~ thirty dollars (\$30.00) shall be paid to the Commissioner upon application for registration for each additional kind of insurance.

In addition to the fees prescribed by this subsection, any person applying for a supplemental license to sell Medicare supplement and long-term care insurance policies shall pay an additional fee of ~~fifteen dollars (\$15.00)~~ thirty dollars (\$30.00) upon application for registration for those kinds of insurance."

Sec. 8. This act is effective upon ratification, and the fees generated herein shall be deposited in the General Fund.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 425

CHAPTER 722

AN ACT TO AUTHORIZE THE STATE PERSONNEL COMMISSION TO ADOPT RULES FOR DISCIPLINARY ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-35 reads as rewritten:

"§ 126-35. ~~Written statement of reason for disciplinary action. Just cause; disciplinary actions for State employees.~~

(a) No permanent employee subject to the State Personnel Act shall be discharged, suspended, or reduced in pay or position, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the department. A copy of the written statement given the employee and the employee's appeal

shall be filed by the department with the State Personnel Director within five days of their delivery. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. The employee, if he is not satisfied with the final decision of the head of the department, or if he is unable, within a reasonable period of time, to obtain a final decision by the head of the department, may appeal to the State Personnel Commission. Such appeal shall be filed not later than 30 days after receipt of notice of the department head's decision. The State Personnel Commission may adopt, subject to the approval of the Governor, rules that define just cause.

(b) Notwithstanding any other provision of this Chapter, a reduction in pay or position which is not imposed for disciplinary reasons shall not be considered a disciplinary action within the meaning of this Article. Disciplinary actions, for the purpose of this Article, are those actions taken in accordance with the disciplinary procedures adopted by the State Personnel Commission and specifically based on unsatisfactory job performance, unacceptable personal conduct or a combination of the two.

(c) For the purposes of contested case hearings under Chapter 150B, an involuntary separation (such as a separation due to a reduction in force) shall be treated in the same fashion as if it were a disciplinary action."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 429

CHAPTER 723

AN ACT TO AMEND THE UNEMPLOYMENT INSURANCE LAW PERTAINING TO HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-15(c) reads as rewritten:

"(c) Appeals. -- Unless an appeal from the adjudicator is withdrawn, an appeals referee shall set a hearing in which the parties are given reasonable opportunity to be heard. The conduct of hearings shall be governed by suitable regulations established by the Commission. Such regulations need not conform to common law or statutory rules of evidence or technical or formal rules of procedure but shall provide for the conduct of hearings in such manner as to ascertain the substantial rights of the parties. The hearings may be

conducted by conference telephone call or other similar means provided that if any party files with the Commission prior written objection to the telephone procedure, that party will be afforded an opportunity for an in-person hearing at such place in the State as the Commission by regulation shall provide. The appeals referee may affirm or modify the conclusion of the adjudicator or issue a new decision in which findings of fact and conclusions of law will be set out or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute the appeal after having been duly notified of the appeals hearing. The evidence taken at the hearings before the appeals referee shall be recorded and the decision of the appeals referee shall be deemed to be the final decision of the Commission unless within 10 days after the date of notification or mailing of the decision, whichever is earlier a written appeal is filed pursuant to such regulations as the Commission may adopt. No person may be appointed as an ~~Appeals Referee~~ appeals referee unless he or she possesses the minimum qualifications necessary to be a staff attorney eligible for designation by the Commission as a hearing officer under G.S. 96-4(m). No appeals referee may engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as appeals referee; violation of this prohibition shall be grounds for removal. Whenever an appeal is taken from a decision of the appeals referee, the appealing party shall submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal, and if such timely statement is not submitted, an appeals referee may dismiss the appeal."

Sec. 2. G.S. 96-15 is amended by adding a new subsection to read:

"(d1) No continuance shall be granted except upon application to the Commissioner, the appeals referee, or other authority assigned to make the decision in the matter to be continued. A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require. Good cause for granting a continuance shall include, but not be limited to, those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State, such as service as a member of the North Carolina General Assembly, or an obligation to participate in a proceeding in a court of greater jurisdiction."

Sec. 3. G.S. 96-4(t)(5) reads as rewritten:

"(5) Privileged Status of Letters and Reports and Other Information Relating to Administration of this Chapter. -- All letters, reports, communication, or any other matters, either oral or written, including any testimony at any hearing, from the employer or employee to each other or to

the Commission or any of its agents, representatives, or employees, which letters, reports, or other communication shall have been written, sent, delivered, or made in connection with the requirements of the administration of this Chapter, shall be absolutely privileged communication in any civil or criminal proceedings except proceedings pursuant to or involving the administration of this Chapter and except proceedings involving child support and only for the purpose of establishing the payment and amount of unemployment compensation benefits. Nothing in this subdivision shall be construed to prohibit the Commission, upon written request and on a reimbursable basis only, from disclosing information to any party to the proceeding from the records of an adjudication or proceeding before an appeals referee, deputy commissioner, or other hearing officer by whatever name called, compiled for the purpose of resolving issues raised pursuant to the Employment Security Law."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 433

CHAPTER 724

AN ACT TO AUTHORIZE CASWELL COUNTY TO HOLD A REFERENDUM ON LONG-TERM SOLID WASTE OPTIONS.

The General Assembly of North Carolina enacts:

Section 1. The Caswell County Board of Commissioners may direct the County Board of Elections to hold a referendum, in accordance with the procedures set forth in Chapter 163 of the General Statutes, for the purpose of submitting to the registered voters of Caswell County several options for satisfying the long-term solid waste disposal needs of Caswell County, as a mechanism for receiving information about the desires of the Caswell County citizens regarding the options. The questions placed on the ballot shall be in a form approved by the Caswell County Attorney. The results of the referendum shall be for informational use by the Caswell County Board of Commissioners and shall not bind the discretion of the Caswell County Board of Commissioners.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 451

CHAPTER 725

AN ACT TO IMPROVE THE INVESTIGATION AND ENFORCEMENT OF CRIMES AGAINST THE ENVIRONMENT, TO DECLARE UNLAWFUL DISCHARGES TO BE CRIMES AND TO ESTABLISH A THREE-YEAR STATUTE OF LIMITATION FOR THE COLLECTION OF CERTAIN ENVIRONMENTAL CIVIL PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399(i)(3) reads as rewritten:

"(3) 'Law enforcement officer' means any officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, 'law enforcement officer' means any employee of a county or ~~municipal park or recreation department~~ municipality designated by the ~~department head~~ county or municipality as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);".

Sec. 2. G.S. 114-15 reads as rewritten:

"§ 114-15. *Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.*

(a) The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in

connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson of, or arson of, damage of, theft from, or theft of, or misuse of, any State-owned personal property, buildings, or other real property or any assault upon or threats against any legislative officer named in G.S. 147-2(1), (2), or (3) or any executive officer named in G.S. 147-3(c). The Bureau also is authorized at the request of the Governor to conduct a background investigation on a person that the Governor plans to nominate for a position that must be confirmed by the General Assembly, the Senate, or the House of Representatives. The background investigation of the proposed nominee shall be limited to an investigation of the person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985). The Governor must give the person being investigated written notice that he intends to request a background investigation at least 10 days prior to the date that he requests the State Bureau of Investigation to conduct the background investigation. The written notice shall be sent by regular mail, and there is created a rebuttable presumption that the person received the notice if the governor has a copy of the notice.

(b) The State Bureau of Investigation is further authorized, upon request of the Governor or the Attorney General, to investigate the commission or attempted commission of the crimes defined in the following statutes:

(1) All sections of Article 4A of Chapter 14 of the General Statutes;

(2) G.S. 14-277.1;

(3) G.S. 14-277.2;

(4) G.S. 14-283;

(5) G.S. 14-284;

(6) G.S. 14-284.1;

(7) G.S. 14-288.2;

(8) G.S. 14-288.7;

(9) G.S. 14-288.8; and

(10) ~~G.S. 14-288.20,~~ 14-288.20;

(11) G.S. 14-284.2;

(12) G.S. 14-399(e);

- (13) G.S. 130A-26.1;
- (14) G.S. 143-215.6B;
- (15) G.S. 143-215.88B; and
- (16) G.S. 143-215.114B.

(c) All records and evidence collected and compiled by the Director of the Bureau and his assistants shall not be considered public records within the meaning of G.S. 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. Provided that all records and evidence collected and compiled by the Director of the Bureau and his assistants shall, upon request, be made available to the district attorney of any district if the same concerns persons or investigations in his district.

(d) In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the Director and any of his assistants who are witnesses in cases arising in courts of this State. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the Treasurer of the State of North Carolina, and there credited to the Bureau of Identification and Investigation Fund."

Sec. 3. G.S. 143-215.6A reads as rewritten:

" § 143-215.6A. *Enforcement procedures; civil penalties.*

(a) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Secretary against any person who:

- (1) Violates any classification, standard, limitation, or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.
- (2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such ~~permit~~, permit or any other permit or certification issued pursuant to authority conferred by this Part, including pretreatment permits issued by local governments and laboratory certifications.
- (3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.
- (4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Article or G.S. 143-355(k) relating to water use information.
- (5) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.

- (6) Violates a rule of the Commission implementing this Part or G.S. 143-355(k).
- (7) Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.
- (8) Violates the offenses set out in G.S. 143-215.6B.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars (\$10,000) per day for so long as the violation continues, unless otherwise stipulated.

(c) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

(e) Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand dollars (\$10,000) per month may be assessed by the Commission against any local government which fails to adopt or enforce a water supply watershed protection program as required by G.S. 143-214.5. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (6) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(h) The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department.

(i) As used in this subsection, 'municipality' refers to any unit of local government which operates a wastewater treatment plant. As used in this subsection, 'unit of local government' has the same meaning as in G.S. 130A-290. The provisions of this subsection shall apply whenever a municipality that operates a wastewater treatment plant with an influent bypass diversion structure and with a permitted discharge of 10 million gallons per day or more into any of the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission is subject to a court order which specifies (i) a schedule of activities with respect to the treatment of wastewater by the municipality; (ii) deadlines for the completion of scheduled activities; and (iii) stipulated penalties for failure to meet such deadlines. A municipality as specified herein that violates any provision of such order for which a penalty is stipulated shall pay the full amount of such penalty as provided in the order unless such penalty is modified, remitted, or reduced by the court.

(j) Local governments certified and approved to administer and enforce pretreatment programs by the Commission pursuant to G.S. 143-215.3(a)(14) may assess civil penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a local government and the civil penalty assessed

by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section.

(k) A person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may request a review of the assessment by filing a request for review with the local government within 30 days of the date the notice of assessment is received. If a local ordinance provides for a local administrative hearing, the hearing shall afford minimum due process including an unbiased hearing official. The local government shall make a final decision on the request for review within 90 days of the date the request for review is filed. The final decision on a request for review shall be subject to review by the superior court pursuant to Article 27 of Chapter 1 of the General Statutes. If the local ordinance does not provide for a local administrative hearing, a person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may contest the assessment by filing a civil action in superior court within 60 days of the date the notice of assessment is received."

Sec. 4. G.S. 143-215.6B reads as rewritten:

" § 143-215.6B. *Enforcement procedures: criminal penalties.*

(a) For purposes of this section, the term 'person' shall mean, in addition to the definition contained in G.S. 143-212, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this section shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(b) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(c) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(d) For the purposes of the felony provisions of this section, a person's state of mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

- (1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.
- (2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.
- (3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.
- (4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.
- (5) Violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time, including but not limited to, guidelines for the pretreatment permit civil penalties. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.
- (6) Occasional, inadvertent, short-term violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(e) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under State criminal offenses may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(f) Any person who negligently violates ~~any~~ any: (i) classification, standard, or limitation established in rules adopted by the Commission pursuant to G.S. 143-214.1, 143-214.2, or 143-215; any

(ii) term, condition, or requirement of a permit issued pursuant to this Part, including permits issued pursuant to G.S. 143-215.1, pretreatment permits issued by local governments, and laboratory certifications; G.S. 143-215.1 or (iii) term, condition, or requirement of a special order or other appropriate document issued pursuant to G.S. 143-215.2; or any (iv) rule of the Commission implementing any of the said sections, this Part; and any person who negligently fails to apply for or to secure a permit required by G.S. 143-215.1 shall be guilty of a misdemeanor punishable by a fine not to exceed fifteen thousand dollars (\$15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars (\$200,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed six months, or by both.

(g) Any person who knowingly and willfully violates any any (i) classification, standard, or limitation established in the rules of adopted by the Commission pursuant to G.S. 143-214.1, 143-214.2, or 143-215 or any 143-215; (ii) term, condition, or requirement of a permit issued pursuant to this Part, including permits issued pursuant to G.S. 143-215.1, pretreatment permits issued by local governments, and laboratory certifications; G.S. 143-215.1 or (iii) term, condition, or requirement of a special order or other appropriate document issued pursuant to G.S. 143-215.2 143-215.2; and any person who knowingly and willfully fails to apply for or to secure a permit required by G.S. 143-215.1 shall be guilty of a Class J felony, punishable by a fine not to exceed one hundred thousand dollars (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed three years, or by both. For the purposes of this subsection, the phrase 'knowingly and willfully' shall mean intentionally and consciously as the courts of this State, according to the principles of common law interpret the phrase in the light of reason and experience.

(h) (1) Any person who knowingly violates any any: (i) classification, standard, or limitation established in the rules of adopted by the Commission pursuant to G.S. 143-214.1, 143-214.2, 143-215, or any 143-215; (ii) term, condition, or requirement of a permit issued pursuant to this Part, including permits issued pursuant to G.S. 143-215.1, pretreatment permits issued by local governments, and laboratory certifications; G.S. 143-215.1 or (iii) term, condition, or requirement of a special order or other appropriate document issued pursuant to G.S. 143-215.2 143-215.2; and any person

who knowingly fails to apply for or to secure a permit required by G.S. 143-215.1 and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class H felony, punishable by a fine not to exceed two hundred fifty thousand dollars (\$250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars (\$1,000,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed 10 years, or by both.

- (2) For the purposes of this subsection, a person's state of mind is knowing with respect to:
 - a. His conduct, if he is aware of the nature of his conduct;
 - b. An existing circumstance, if he is aware or believes that the circumstance exists; or
 - c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.
- (3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:
 - a. The person is responsible only for actual awareness or actual belief that he possessed; and
 - b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.
- (4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.
 - (i) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or a rule implementing this Article; or who knowingly makes a false statement of a material fact in a rulemaking proceeding or

contested case under this Article; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or rules of the Commission implementing this Article shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000), or by imprisonment not to exceed six months, or by both.

(j) Any person convicted of a felony offense under subsections (g), (h), or (i) of this section following a previous felony conviction under this section shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine, or twice the term of imprisonment provided in the subsection under which the second or subsequent conviction occurs."

Sec. 5. G.S. 113A-64(a)(2) reads as rewritten:

"(2) The Secretary, for violations under the Commission's jurisdiction, or the governing body of any local government having jurisdiction, shall determine the amount of the civil penalty to be assessed under G.S. 113A-64(a) and shall make written demand for payment upon the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the Secretary shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the penalty, and local governments shall refer such matters to their respective attorneys for the institution of a civil action in the name of the local government in the appropriate division of the General Court of Justice of the county in which the violation is alleged to have occurred for recovery of the penalty. Such civil actions must be filed within three years of the date the final agency decision was served on the violator. Any sums recovered shall be used to carry out the purposes and requirements of this Article."

Sec. 6. G.S. 113A-126(d)(3) reads as rewritten:

"(3) The Commission may assess the penalties provided for in this subsection. The Commission shall notify a person who is assessed a penalty by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest a penalty by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay a penalty, the Commission shall refer the matter to the Attorney General

for collection. Such civil actions must be filed within three years of the date the final agency decision was served on the violator."

Sec. 7. G.S. 143-215.114A(f) reads as rewritten:

"(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (5) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

Sec. 8. G.S. 130A-22(a) reads as rewritten:

"§ 130A-22. *Administrative penalties.*

(a) The Secretary may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five thousand dollars (\$5,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed twenty-five thousand dollars (\$25,000) per day in case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars (\$50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

Sec. 9. This act becomes effective 1 October 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 472

CHAPTER 726

AN ACT TO REVISE THE DRIVERS LICENSE LAW TO HARMONIZE THE COMMERCIAL DRIVERS LICENSE PROVISIONS WITH THE REGULAR DRIVERS LICENSE PROVISIONS, TO CLARIFY THE EFFECT OF A DISQUALIFICATION TO DRIVE A COMMERCIAL MOTOR VEHICLE, AND TO IMPOSE A FEE FOR A MOTORCYCLE ENDORSEMENT, A COMMERCIAL LEARNER'S PERMIT, AND THE RESTORATION OF A LICENSE AFTER DISQUALIFICATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01(3c) and (3d) read as rewritten:

- "(3c) Commercial ~~Driver~~ Drivers License (CDL). -- A license issued ~~in accordance with the requirements of this Chapter to an individual which authorizes that~~ by a state to an individual who resides in the state that authorizes the individual to drive a class of commercial motor vehicle. A 'nonresident commercial ~~driver~~ drivers license (NRCDL)' is issued by a state to an individual who resides in a foreign jurisdiction.
- (3d) Commercial Motor Vehicle. -- ~~A motor vehicle~~ Any of the following motor vehicles that are designed or used to transport passengers or property:
- a. ~~If the vehicle has a gross vehicle weight rating of 26,001 or more pounds or a lesser rating as determined by federal or State regulation;~~ A Class A motor vehicle that has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
 - b. A Class B motor vehicle.
 - c. A Class C motor vehicle that meets either of the following descriptions:
 1. ~~If the vehicle is~~ Is designed to transport 16 or more passengers, including the ~~driver; or driver.~~
 2. ~~If the vehicle is~~ Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

- d. Any other motor vehicle included by federal regulation in the definition of commercial motor vehicle pursuant to 49 U.S.C. Appdx. § 2716."

Sec. 2. G.S. 20-4.01(12a) reads as rewritten:

"(12a) Gross Vehicle Weight Rating (GVWR). -- The value specified by the manufacturer as the maximum loaded weight of a single or combination vehicle, or the registered gross weight of the vehicle, whichever is greater, vehicle. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units."

Sec. 3. G.S. 20-4.01(41a) reads as rewritten:

"(41a) Serious Traffic Violation. -- A conviction of one of the following offenses when operating a commercial motor vehicle of: vehicle:

- a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit; limit.
- b. Careless and reckless driving; or driving.
- c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.
- d. Improper or erratic lane changes.
- e. Following the vehicle ahead too closely."

Sec. 4. G.S. 20-4.01 is amended by adding the following definitions in the appropriate order to read:

"(2a) Class A Motor Vehicle. -- A combination of motor vehicles that meets either of the following descriptions:

- a. Has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
- b. Has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2b) Class B Motor Vehicle. -- Any of the following:

- a. A single motor vehicle that has a GVWR of at least 26,001 pounds.
- b. A combination of motor vehicles that includes as part of the combination a towing unit that has a GVWR of at least 26,001 pounds and a towed unit that has a GVWR of less than 10,001 pounds.

(2c) Class C Motor Vehicle. -- Any of the following:

- a. A single motor vehicle not included in Class B.

- b. A combination of motor vehicles not included in Class A or Class B.
- (4a) Conviction. -- A conviction for an offense committed in North Carolina or another state:
 - a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:
 - 1. A final conviction of a criminal offense, including a no contest plea.
 - 2. A determination that a person is responsible for an infraction, including a no contest plea.
 - 3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
 - 4. A third or subsequent prayer for judgment continued within any five-year period.
 - b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:
 - 1. An unvacated adjudication of guilt.
 - 2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
 - 3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
 - 4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
- (32a) Regular Drivers License. -- A license to drive a commercial motor vehicle that is exempt from the commercial drivers license requirements or a noncommercial motor vehicle."

Sec. 5. G.S. 20-7 reads as rewritten:

" § 20-7. Drivers' licenses; expiration; examination; fees. Issuance and renewal of drivers licenses.

(a) Except as otherwise provided in this Chapter, no person shall operate a motor vehicle on a highway unless such person is a resident of this State and has first been To drive a motor vehicle on a highway, a person must be licensed by the Division under the provisions of this Article or Article 2C for the class of vehicle being driven. Driver licenses shall be classified under this Article as follows; of this Chapter to drive that vehicle. The Division issues regular drivers

licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

- (1) Class "A" which entitles a licensee to drive any vehicle or combination of vehicles with a gross vehicle weight rating (GVWR) of 26,001 pounds or more, provided the GVWR of the vehicle or vehicle being towed are in excess of 10,000 pounds and are exempt from Article 2C of this Chapter. A Class A license entitles the licensee to operate Class B and C vehicles except motorcycles. A. A Class A license authorizes the holder to drive any of the following:

 - a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
 - b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
- (2) Class "B" which entitles a licensee to drive a single vehicle with a GVWR of 26,001 pounds or more, or any such vehicle towing a single vehicle not in excess of 10,000 pounds provided the towed vehicle is exempt from Article 2C of this Chapter. A Class B license entitles the licensee to operate Class C vehicles except motorcycles. B. A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
- (3) Class "C" which entitles a licensee to drive a single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing another vehicle with a GVWR not in excess of 10,000 pounds, both of which are exempt from Article 2C. A Class C licensee who is a volunteer member of a municipal or rural fire department, a volunteer member of a rescue squad, or a volunteer member of Emergency Medical Services (EMS) may also drive any fire-fighting vehicle, rescue vehicle, EMS vehicle, or combination of these vehicles, regardless of GVWR, when necessary in the

~~performance of his duty. A Class C license does not entitle the licensee to drive a motorcycle. C. A Class C license authorizes the holder to drive any of the following:~~

- ~~a. A Class C motor vehicle that is not a commercial motor vehicle.~~
- ~~b. When operated by a volunteer member of a fire department, rescue squad or Emergency Medical Services (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle, or a combination of these vehicles.~~

~~Any unusual vehicle shall be assigned by the Commissioner to the most appropriate class under this subsection or Article 2C with suitable special restrictions if they appear to be necessary. The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.~~

~~Any person who takes up residence in this State on a permanent basis is exempt from the provisions of this subsection for 30 days from the date that residence is established, if he is properly licensed in the jurisdiction of which he is a former resident. A new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 30 days after becoming a resident.~~

~~(a) No operator's or chauffeur's license issued on or after October 1, 1979, shall authorize the licensee to operate a motorcycle unless the license has been appropriately endorsed by the Division to indicate that the licensee has passed special road and written (or oral) tests demonstrating competence to operate a motorcycle. Any person licensed prior to January 1, 1978, who has operated a motorcycle for at least two years prior to that date, will be exempt from the provisions of this subsection upon filing with the Division of Motor Vehicles an affidavit attesting to said two years' experience. Nothing contained in this subsection shall be construed to require a moped operator to have a driver's license. To drive a motorcycle, a person must have a drivers license and a motorcycle endorsement. To obtain a motorcycle endorsement, a person must demonstrate competence to drive a motorcycle by passing a road test and a written or oral test concerning a motorcycle and must pay the fee for a motorcycle endorsement. Neither a drivers license nor a motorcycle endorsement is required to drive a moped.~~

~~(b) Every application for a driver's drivers license shall be made upon the approved form furnished by the Division.~~

~~(c) No person shall hereafter be issued a driver's license until it is determined that such person is physically and mentally capable of safely operating motor vehicles (of the type or class for which the~~

~~person applied to be licensed) over the highways of the State. In determining whether or not a person is physically and mentally capable of safely operating motor vehicles over the highways of the State, the Division shall require such person to demonstrate his capability by passing an examination, which~~ To obtain a drivers license from the Division, a person must be a resident of this State and must demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required. The Division shall note an endorsement on the face of a drivers license.

To demonstrate physical and mental ability, a person must pass an examination. The examination may include road tests, vision tests, oral and tests, and, in the case of literate applicants written tests, and tests of vision, applicants, written tests as the Division may require. The Commissioner may adopt regulations that allow employees of governmental agencies or private businesses to receive a driver's drivers license without taking a road test if the conditions specified in the regulations are complied with. Provided, however, that persons 60 years of age and over, when being examined as herein provided, shall not be required to parallel park a motor vehicle as part of any such examination.

(c1) In addition to the other requirements of this section, no person shall be issued a driver's drivers license until such the person has furnished proof that he is financially responsible, of financial responsibility. Proof of financial responsibility shall be in one of the following forms:

- (1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or
- (2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is

insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the license application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner.

Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(d) The Division shall cause each person who has heretofore been issued a ~~driver's~~ drivers license to be examined or reexamined, as the case may be, to determine whether or not such person is physically and mentally capable of safely operating motor vehicles over the highways of the State. Those persons found, as a result of such examination or reexamination, to be capable of safely operating motor vehicles over the highways of the State shall be reissued ~~drivers~~ drivers licenses; and those persons found to be incapable of safely operating motor vehicles over the highways of the State shall not be reissued ~~drivers~~ drivers licenses. The examination required by this subsection may include such road tests, oral and in the case of literate applicants written tests, and tests of vision, as the Division may require and shall include such test as is necessary to assure that applicants recognize the "international symbol of access" for the handicapped (sign R7-8, Manual on Uniform Traffic Control Devices) and devices relative to handicapped drivers as set forth in Article 2A of this Chapter. Provided, however, that persons 60 years of age and over, when being examined as herein provided, shall not be required to parallel park a motor vehicle as part of any such examination.

(e) ~~The Division is hereby authorized to grant unlimited licenses or licenses containing such limitations as it may deem advisable. Such limitation or limitations may impose any restriction it finds advisable on a drivers license. A restriction shall be noted on the face of the~~

~~license, and it shall be license. It is unlawful for the holder of a restricted license so limited to operate a motor vehicle without complying with the limitations, and the operation of a motor vehicle without complying with the limitations by a person holding a license with such limitations shall be the restriction and is the equivalent of operating a motor vehicle without a driver's license. If any applicant shall suffer from any physical defect or disease which affects his or her operation of a motor vehicle, the Division may require to be filed with it a certificate of such applicant's condition signed by some medical authority of the applicant's community designated by the Division. This certificate shall in all cases be treated as confidential. Nothing in this subsection shall be construed to prevent the Division from refusing to issue a license, either limited or unlimited, restricted or unrestricted, to any person deemed to be incapable of safely operating a motor vehicle with safety to himself and to the public; Provided, that nothing herein shall prohibit vehicle. This subsection does not prohibit deaf persons from operating motor vehicles who in every other way meet the requirements of this section.~~

(f) ~~The drivers' licenses issued under this section shall automatically expire~~ A drivers license expires on the birthday of the licensee in the fourth year following the year of issuance; and no new license shall be issued to any operator after the expiration of his license until such operator has again passed the examination specified in this section. Any operator may at any time within 60 days prior to the expiration of his license apply for a new license and if the applicant meets the requirements of this Article, Chapter, the Division shall issue a new license to him. A new license issued within 60 days prior to the expiration of an applicant's old license or within 12 months thereafter shall automatically expire four years from the date of the expiration of the applicant's old license.

Any person serving in the armed forces of the United States on active duty and holding a valid ~~driver's~~ drivers license properly issued under this section and stationed outside the State of North Carolina may renew his license by making application to the Division by mail. Any other person, except a nonresident as defined in this Article, who holds a valid ~~driver's~~ drivers license issued under this section and who is temporarily residing outside North Carolina, may also renew by making application to the Division by mail. For purposes of this section "temporarily" shall mean not less than 30 days continuous absence from North Carolina. In either case, the Division may waive the examination and color photograph ordinarily required for the renewal of a ~~driver's~~ drivers license, and may impose in lieu thereof such conditions as it may deem appropriate to each particular application: provided that such license shall expire 30 days after the

licensee returns to North Carolina, and such license shall be designated as temporary.

Provided further, that no person who applies for the renewal of ~~his driver's~~ a drivers license shall be required to take a written examination or road test as a part of any such examination unless such person has been convicted of a traffic violation or had prayer for judgment continued with respect to any traffic violation within a four-year period immediately preceding the date of such person's renewal application or unless such person suffers from a mental or physical condition which impairs his ability to operate a motor vehicle.

Provided further, that no person who applies for the renewal of his ~~driver's~~ drivers license and who must take the written examination pursuant to this section shall be issued a renewed license unless such person has furnished the proof that ~~he is financially responsible.~~ Proof of financial responsibility shall be in one of the following forms:

- (1) ~~A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or~~
- (2) ~~A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.~~

~~The provisions of the preceding paragraph do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the license application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.~~

~~For the purpose of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.~~

~~The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner.~~

~~Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter, of financial responsibility specified in subsection (c1).~~

(g) Repealed by Session Laws 1979, c. 667, s. 6.

(h) Repealed by Session Laws 1979, c. 113, s. 1.

~~(i) The fee for issuance or reissuance of a Class "C" license is ten dollars (\$10.00). The fee for issuance or reissuance of a Class "B" or Class "A" license is fifteen dollars (\$15.00). A person receiving at the same time a driver's license and an endorsement pursuant to G.S. 20-7(a1) shall be charged only the fee required for the class of driver's license he is receiving. following fees apply to a regular drivers license:~~

<u>Class of Regular License</u>	<u>Fee</u>
<u>Class A</u>	<u>\$15.00</u>
<u>Class B</u>	<u>15.00</u>
<u>Class C</u>	<u>10.00.</u>

~~The fee for a motorcycle endorsement is five dollars (\$5.00). The appropriate fee must be paid before a person receives a regular drivers license or an endorsement.~~

~~(il) Any person whose driver's drivers license or other privilege to operate a motor vehicle in this State has been suspended, canceled or has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of twenty-five dollars (\$25.00). A person whose driver's drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of fifty dollars (\$50.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds five million dollars (\$5,000,000). and shall pay a restoration fee of twenty-five dollars (\$25.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new driver's drivers license or the restoration of such driver's license or privilege; such the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was suspended, canceled, revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The twenty-five dollar (\$25.00) fee, and the first twenty-five dollars (\$25.00) of the fifty-dollar~~

(\$50.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars (\$25.00) of the fifty-dollar (\$50.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds five million dollars (\$5,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of five million dollars (\$5,000,000).

(j) The fees collected under this section and G.S. 20-14 shall be placed in the Highway Fund.

~~(k) Any person operating a motor vehicle in violation of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided in this section.~~

(l) Any person who except for lack of instruction in operating a motor vehicle would be qualified to obtain an operator's license under this Article may apply for a temporary learner's permit, and the Division shall issue such permit, entitling the applicant, while having such permit in his immediate possession, to drive a specified type or class of motor vehicle upon the highways for a period of 18 months. The fee for issuance of a temporary learner's permit shall be five dollars (\$5.00). Any such learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permittee must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the class or type of vehicle being operated and who is seated in the seat beside the permittee.

The fee for the issuance of a renewal or a second temporary learner's permit shall be five dollars (\$5.00).

~~(l-1) The Division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to an applicant who is enrolled in a driver training program as provided for in G.S. 20-88.1 even though the applicant has not yet reached the legal age to be eligible for a driver's license. Such instruction permit shall entitle the permittee when he has such permit in his immediate possession to operate a specified type or class of motor vehicle subject to the restrictions imposed by the Division. The restrictions which the Division may impose on such~~

~~permits include but are not limited to restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee.~~

(m) The Division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to ~~an applicant who is enrolled in a driver-training program approved by the State Superintendent of Public Instruction even though the applicant has not yet reached the legal age to be eligible for a driver's license.~~ any of the following applicants:

- (1) An applicant who is less than 18 years old and is enrolled in a drivers education program that is approved by the State Superintendent of Public Instruction and is offered at a public high school, a nonpublic secondary school, or a licensed drivers training school.
- (2) An applicant for certification under G.S. 20-218 as a school bus driver.

~~Such A restricted instruction permit shall entitle the permittee when he has such permit in his immediate possession to operate~~ authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to the any restrictions imposed by the Division. The restrictions which the Division may impose on such permits include but are not limited to a permit include restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee. A restricted instruction permit is not required to have a distinguishing number or a picture of the person to whom the permit is issued.

(n) ~~Every driver's~~ drivers license issued by the Division shall bear thereon the distinguishing number assigned to the licensee and color photograph of the licensee of a size approved by the Commissioner and shall contain the name, age, residence address and a brief description of the licensee, who, for the purpose of identification and as a condition precedent to the validity of the license, immediately upon receipt thereof, shall endorse his or her regular signature in ink upon the same in the space provided for that purpose unless a facsimile of his or her signature appears thereon; provided the requirement that a color photograph of the licensee appear on the license may be waived by the Commissioner upon satisfactory proof that the taking of such photograph violates the religious convictions of the licensee. Drivers licenses shall be issued with differing color photographic backgrounds according to the licensee's age at time of issuance for the following age groups:

- (1) Persons who have not attained the age of 21 years.
- (2) Persons who have attained the age of 21 years.

The Division of Motor Vehicles shall determine the different colors to be used. Such license shall be carried by the licensee at all times while engaged in the operation of a motor vehicle. ~~However, no person charged with failing to carry a license shall be convicted if he produces in court a driver's license issued to him which was valid at the time of his arrest for the type or class of vehicle he was operating at the time of his arrest.~~

~~(e) Any person convicted of violating any provision of this section shall be guilty of a misdemeanor and punished in the discretion of the court. Provided, that no person shall be convicted of operating a motor vehicle without a driver's license if he produces in court at the time of his trial upon such charge an expired driver's license and a renewed driver's license issued to him within 30 days of the expiration date of the expired license and which would have been a defense to the charge had it been issued prior to the time of the alleged offense. "~~

Sec. 6. G.S. 20-9(a) reads as rewritten:

~~"(a) A Class 'C' license shall not be issued to any person under 16 years of age and no Class A, B, or C commercial driver license shall be issued to any person under 21 years of age except as provided in G.S. 20-37.13(a) and G.S. 20-218(a). An endorsement to transport hazardous materials shall not be issued to any person under 21 years of age. To obtain a regular drivers license, a person must have reached the minimum age set in the following table for the class of license sought:~~

<u>Class of Regular License</u>	<u>Minimum Age</u>
<u>Class A</u>	<u>18</u>
<u>Class B</u>	<u>18</u>
<u>Class C</u>	<u>16</u>

~~G.S. 20-37.13 sets the age qualifications for a commercial drivers license."~~

Sec. 7. G.S. 20-17 reads as rewritten:

~~" § 20-17. Mandatory revocation of license by Division.~~

~~The Division shall forthwith revoke the license of any driver upon receiving a record of such the driver's conviction for any of the following offenses when such conviction has become final; offenses:~~

- ~~(1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.~~
- ~~(2) Either of the following impaired driving offenses:~~
 - ~~a. Impaired driving under G.S. 20-138.1.~~
 - ~~b. Impaired driving under G.S. 20-138.2 when the person convicted did not take a chemical test at the time of the offense or the person took a chemical test at the time of the offense and the test revealed that the person had an~~

alcohol concentration at any relevant time after driving of less than 0.04 or of 0.10 or more.

- (3) Any felony in the commission of which a motor vehicle is used.
- (4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).
- (5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.
- (6) ~~Conviction, or forfeiture of bail not vacated.~~ Conviction upon two charges of reckless driving committed within a period of 12 months.
- (7) ~~Conviction, or forfeiture of bail not vacated.~~ Conviction upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.
- (8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a ~~driver's~~ drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.
- (9) Death by vehicle as defined in G.S. 20-141.4.
- (10) Speeding in excess of 55 miles per hour and at least 15 miles per hour over the legal limit in violation of G.S. 20-141(j).
- (11) Conviction of assault with a motor vehicle."

Sec. 8. G.S. 20-17.4 reads as rewritten:

" § 20-17.4. ~~Disqualification and cancellation of to drive a commercial driver license, motor vehicle.~~

(a) One Year. -- Any of the following disqualifies a person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of: year:

- (1) A first conviction of G.S. 20-138.1 or G.S. 20-138.2(a)(1) - Driving a commercial motor vehicle while subject to an impairing substance; 20-138.1, driving while impaired, that occurred while the person was driving a commercial motor vehicle.
- (2) G.S. 20-138.2(a)(2) - Driving a commercial motor vehicle while the alcohol concentration of the person's blood or breath is 0.04 or more; A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.

- (3) A first conviction of G.S. 20-166, hit and run, G.S. 20-166(a) - Felonius hit and run involving a commercial motor vehicle driven by the person; person.
- (4) A first conviction of a felony in the commission of which Using a commercial motor vehicle in the commission of any felony; or was used.
- (5) Refusal to submit to a chemical test to determine the driver's alcohol concentration while when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

If any of the above violations occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

(b) Modified Life. -- A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection (a) of this section, or any combination of those offenses, arising from two or more separate incidents. The Division may issue regulations establishing adopt guidelines, including conditions, under which a disqualification for life under this paragraph subsection may be reduced to 10 years.

(c) Life. -- A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) Less Than A Year. -- A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(e) After suspending, revoking, or cancelling a commercial driver license, the Division shall update its records to reflect that action within 10 days. After suspending, revoking, or cancelling a nonresident commercial driver's privileges, the Division shall forthwith notify the licensing authority of the State which issued the commercial driver license or commercial driver instruction permit. Three Years. -- A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense

or commits an act requiring disqualification under subsection (a) and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded."

Sec. 9. Article 2 of Chapter 20 is amended by adding a new section to read:

" § 20-17.5. Effect of disqualification.

(a) When No Accompanying Revocation. -- A person who is disqualified as the result of a conviction that requires disqualification but not revocation may keep any regular Class C drivers license the person had at the time of the offense resulting in disqualification. If the person had a Class A or Class B regular drivers license or a commercial drivers license when the offense occurred, all of the following apply:

(1) The person must give the license to the court that convicts the person or, if the person is not present when convicted, to the Division.

(2) The person may apply for a regular Class C drivers license.

(b) When Revocation And Disqualification. -- When a person is disqualified as the result of a conviction that requires both disqualification and revocation, all of the following apply:

(1) The person must give any drivers license the person has to the court that convicts the person or, if the person is not present when convicted, to the Division.

(2) The person may obtain limited driving privileges to drive a noncommercial motor vehicle during the revocation period to the extent the law would allow limited driving privileges if the person had been driving a noncommercial motor vehicle when the offense occurred. The same procedure, eligibility requirements, and mandatory conditions apply to limited driving privileges authorized by this subdivision that would apply if the person had been driving a noncommercial motor vehicle when the offense occurred.

(3) If the disqualification period is longer than the revocation period, the person may apply for a regular Class C drivers license at the end of the revocation period.

(c) Refusal To Take Chemical Test. -- When a person is disqualified for refusing to take a chemical test, all of the following apply:

(1) The person must give any license the person has to a court, a law enforcement officer, or the Division, in accordance with G.S. 20-16.2 and G.S. 20-16.5.

(2) The person may obtain limited driving privileges to drive a noncommercial motor vehicle during the period the person's

license is revoked for the refusal that disqualified the person to the extent the law would allow limited driving privileges if the person had been driving a noncommercial motor vehicle at the time of the refusal. The same procedure, eligibility requirements, and mandatory conditions apply to limited driving privileges authorized by this subdivision that would apply if the person had been driving a noncommercial motor vehicle at the time of the refusal.

- (3) If the disqualification period is longer than the revocation period, the person may apply for a regular Class C drivers license at the end of the revocation period.

(d) Obtaining Class C Regular License. -- A person who is authorized by this section to apply for a regular Class C drivers license and who meets all of the following criteria may obtain a regular Class C drivers license without taking a test:

- (1) The person must have had a Class A or Class B regular drivers license or a commercial drivers license when the person was disqualified.
(2) The person's license must have been issued by the Division.
(3) The person's license must not have expired by the date the person applies for a regular Class C drivers license.

Upon application and payment of the fee set in G.S. 20-14 for a duplicate license, the Division shall issue a person who meets these criteria a regular Class C drivers license. The license shall include the same endorsements and restrictions as the former Class A regular, Class B regular, or commercial drivers license, to the extent they apply to a regular Class C drivers license. A regular Class C drivers license issued to a person who meets these criteria expires the same day as the license it replaces.

G.S. 20-7 governs the issuance of a regular Class C drivers license to a person who is authorized by this section to apply for a regular Class C drivers license but who does not meet the listed criteria. In accordance with that statute, the Division may require the person to take a test and the person must pay the license fee.

(e) Restoration Fee. -- A person who is disqualified must pay the restoration fee set in G.S. 20-7(i1) the first time any of the following events occurs as a result of the same disqualification:

- (1) The Division reinstates a Class A regular drivers license, a Class B regular drivers license, or a commercial drivers license the person had at the time of the disqualification by issuing the person a duplicate license.
(2) The Division issues a Class A regular drivers license, a Class B regular drivers license, or a commercial drivers license to the person.

- (3) If the person's license was revoked because of the conviction or act requiring disqualification, the Division issues a regular Class C drivers license to the person.

The restoration fee does not apply the second time any of these events occurs as a result of the same disqualification."

Sec. 10. G.S. 20-24 reads as rewritten:

"§ 20-24. When court to forward license to Division and report convictions, convictions and prayers for judgment continued.

(a) ~~License. -- Whenever any person is convicted of any offense for which this Article makes mandatory the revocation of the driver's license of such person by the Division, the court in which such conviction is had shall require the surrender to it of all drivers' licenses then held by the person so convicted and the court shall thereupon forward the same, together with a record of such conviction, to the Division within 30 days.~~

~~The clerks of court, assistant clerks of court and deputy clerks of court in which any person is convicted, and as a result thereof the revocation or suspension of the driver's license of such person is required under the provisions of this Chapter, are hereby designated as agents of the Division of Motor Vehicles for the purpose of receiving all drivers' licenses required to be surrendered under this section, and are hereby authorized to and shall give to such licensee a dated receipt for any such license surrendered, such receipt to be upon such form as may be approved by the Commissioner of Motor Vehicles. The original of such receipt shall be mailed forthwith to the Driver License Section of the Division of Motor Vehicles together with the driver's license. Any driver's license which has been surrendered and for which a receipt has been issued as herein required shall be revoked or suspended as the case may be as of the date shown upon the receipt issued to such person.~~

A court that convicts a person of an offense that requires revocation of the person's drivers license shall require the person to give the court any regular or commercial drivers license issued to that person. A court that convicts a person of an offense that requires disqualification of the person but would not require revocation of a regular drivers license issued to that person shall require the person to give the court any Class A or Class B regular drivers license and any commercial drivers license issued to that person.

The clerk of court shall accept a drivers license required to be given to the court under this subsection. A clerk of court who receives a drivers license shall give the person whose license is received a copy of a dated receipt for the license. The receipt must be on a form approved by the Commissioner. A revocation or disqualification for

which a license is received under this subsection is effective as of the date on the receipt for the license.

The clerk of court shall send to the Division any license received under this subsection, a record of the conviction for which the license was received, and the original dated receipt for the license. The clerk of court shall send these items to the Division within 30 days after entry of the conviction for which the license was received.

~~(b) Convictions and PJs. -- Every court having jurisdiction over offenses committed under this Article, or any other law of this State regulating the operation of motor vehicles on highways, shall forward to the Division a record of the conviction of any person in said court for a violation of any [of] said laws, and may recommend the suspension of the driver's license of the person so convicted. Every court shall also forward to the Division a record of every conviction in which sentence is suspended on condition that the defendant not operate a motor vehicle for a period of time, and such report shall state the period of time for which such condition is imposed; provided that the punishment for the violation of this subsection shall be the same as provided in G.S. 20-7(a). The clerk of court shall send the Division a record of any of the following:~~

- (1) A conviction of a violation of a law regulating the operation of a vehicle.
- (2) A conviction for which the convicted person is placed on probation and a condition of probation is that the person not drive a motor vehicle for a period of time, stating the period of time for which the condition applies.
- (3) A conviction of a felony in the commission of which a motor vehicle is used, when the judgment includes a finding that a motor vehicle was used in the commission of the felony.
- (4) A conviction that requires revocation of the drivers license of the person convicted and is not otherwise reported under subdivision (1).
- (5) An order entering prayer for judgment continued in a case involving an alleged violation of a law regulating the operation of a vehicle.

With the approval of the Commissioner, the clerk of court may forward a record of conviction or prayer for judgment continued to the Division by electronic data processing means.

~~(b1) In any case where the in which the Division, for any reason, does not receive a record of a conviction for any reason has been received by the Division for or a prayer for judgment continued until more than one year after the date of the final conviction, it is entered, the Division may, in its discretion, substitute a period of probation for all or any part of a suspension or revocation or disqualification~~

required because of the ~~conviction~~, conviction or prayer for judgment continued.

~~(c) For purposes of this Chapter, the term "conviction" when referring to offenses committed in North Carolina shall mean: (i) a final conviction of a criminal offense including a no contest plea, (ii) a determination that a person is responsible for an infraction including a no contest plea, (iii) an order of forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes, which forfeiture has not been vacated, or (iv) a third or subsequent prayer for judgment continued within any five-year period and to this end all orders entering prayer for judgments continued entered by the courts shall be reported to the Division of Motor Vehicles.~~

~~For the purposes of this Chapter, the term "conviction" when referring to offenses committed outside of the State of North Carolina shall mean an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal; an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court; or a violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.~~

~~(d) After November 1, 1935, no driver's license shall be suspended or revoked except in accordance with the provisions of this Article. Scope. -- This Article governs drivers license revocation and disqualification. A drivers license may not be revoked and a person may not be disqualified except in accordance with this Article.~~

~~(e) Special Information. -- When a court sends a report of a conviction of homicide to the Division, it must indicate on that report whether the homicide conviction is one involving impaired driving. A judgment for a conviction for an offense for which special information is required under this subsection shall, when appropriate, include a finding of the special information. The convictions for which special information is required and the specific information required is as follows:~~

- ~~(1) Homicide. -- If a conviction of homicide involves impaired driving, the judgment must indicate that fact.~~
- ~~(2) G.S. 20-138.1, Driving While Impaired. -- If a conviction under G.S. 20-138.1 involves a commercial motor vehicle, the judgment must indicate that fact. If a conviction under G.S. 20-138.1 involves a commercial motor vehicle that was transporting a hazardous substance required to be placarded, the judgment must indicate that fact.~~

- (3) G.S. 20-138.2, Driving Commercial Motor Vehicle While Impaired. -- If the commercial motor vehicle involved in an offense under G.S. 20-138.2 was transporting a hazardous material required to be placarded, a judgment for that offense must indicate that fact.
- (4) G.S. 20-166, Hit and Run. -- If a conviction under G.S. 20-166 involves a commercial motor vehicle, the judgment must indicate that fact. If a conviction under G.S. 20-166 involves a commercial motor vehicle that was transporting a hazardous substance required to be placarded, the judgment must indicate that fact.
- (5) Felony Using Commercial Motor Vehicle. -- If a conviction of a felony in which a commercial motor vehicle was used involves the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance, the judgment must indicate that fact. If a commercial motor vehicle used in a felony was transporting a hazardous substance required to be placarded, the judgment for that felony must indicate that fact."

Sec. 11. G.S. 20-26(a) reads as rewritten:

"(a) The Division shall keep a record of ~~test, proceedings and orders pertaining to all driver's licenses granted, refused, suspended or revoked,~~ all applications for a drivers license, all tests given an applicant for a drivers license, all applications for a drivers license that are denied, all drivers licenses issued, renewed, cancelled, or revoked, all disqualifications, all convictions affecting a drivers license, and all prayers for judgment continued that may lead to a license revocation. When the Division cancels or revokes a commercial drivers license or disqualifies a person, the Division shall update its records to reflect that action within 10 days after the cancellation, revocation, or disqualification becomes effective. When a person who is not a resident of this State is convicted of an offense or commits an act requiring revocation of the person's commercial drivers license or disqualification of the person, the Division shall notify the licensing authority of the person's state of residence.

The Division shall keep records of convictions as defined in G.S. 20-24(c) occurring outside North Carolina only for the offenses of exceeding a stated speed limit of 55 miles per hour or more by more than 15 miles per hour, driving while license suspended or revoked, careless and reckless driving, engaging in prearranged speed competition, engaging willfully in speed competition, hit-and-run driving resulting in damage to property, unlawfully passing a stopped school bus, illegal transportation of alcoholic beverages, and the

offenses included in G.S. 20-17. ~~Provided, the~~ The Division shall also record keep records of convictions occurring outside North Carolina for speeding in excess of 15 miles per hour over the posted speed limit occurring outside of North Carolina if the vehicle involved is a commercial motor vehicle, any serious traffic violation that involves a commercial motor vehicle and is not otherwise required to be kept under this subsection."

Sec. 12. G.S. 20-28 reads as rewritten:

" § 20-28. Unlawful to drive while license ~~suspended or revoked~~ suspended or while disqualified.

(a) Driving While License Revoked. -- Any person whose ~~driver's~~ drivers license has been ~~suspended or revoked~~ revoked, other than permanently, ~~as provided in this Chapter, who shall drive~~ drives any motor vehicle upon the highways of the State while ~~such the~~ the license is ~~suspended or revoked shall be~~ is guilty of a ~~misdemeanor~~ misdemeanor and his ~~misdemeanor~~. Upon conviction, the person's license shall be ~~suspended or revoked, as the case may be, revoked~~ revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

~~Provided, however, any person whose license has been suspended or revoked under this section for 12 months may apply for a license after 90 days; any person whose license has been suspended or revoked under this section for two years may apply for a license after 12 months; any person whose license has been suspended or revoked under this section permanently may apply for a license after three years. Upon the filing of such application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted within the suspension or revocation period of a motor vehicle offense, or a violation of the alcoholic beverages laws or drug laws of North Carolina or any other state that occurred during the period of suspension or revocation. The new license may be issued upon such terms and conditions as the Division may see fit to impose for the balance of the suspension or revocation period. When the suspension or revocation period is permanent the terms and conditions imposed by the Division may not exceed three years.~~

Upon conviction, a violator of this ~~section~~ subsection shall be punished by a fine of not less than two hundred dollars ~~(\$200.00)~~ (\$200.00), or imprisonment in the discretion of the court not to exceed two years, or ~~both; provided, however, the both.~~ both. The restoree of a ~~suspended or revoked driver's~~ drivers license who operates a motor vehicle upon the ~~streets or~~ highways of the State without maintaining financial responsibility as provided by law shall be punished as for operating without a ~~driver's~~ drivers license.

(a) Driving Without Reclaiming License. -- A person convicted under subsection (a) shall be punished as if he had been convicted of driving without a ~~driver's~~ license under G.S. 20-7 if he demonstrates to the court that:

- (1) At the time of the offense, his license was revoked solely under G.S. 20-16.5; and
- (2) a. The offense occurred more than 30 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 30 days as provided under subdivision (3) of that subsection; or
b. The offense occurred more than 10 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5.

In addition, a person punished under this subsection shall be treated for ~~driver's~~ drivers license and insurance rating purposes as if he had been convicted of driving without a license under G.S. 20-7, and the conviction report sent to the Division must indicate that the person is to be so treated.

(b) Driving While License Permanently Revoked. -- Any person whose license has been permanently revoked ~~or permanently suspended, as provided in this Article,~~ who ~~shall drive~~ drives any motor vehicle upon the highways of this State while ~~such the~~ license is permanently revoked ~~or permanently suspended shall be~~ is guilty of a misdemeanor and shall be imprisoned for not less than 30 days nor more than two years and fined not more than one thousand dollars (\$1,000) in the discretion of the court. The first 30 days of imprisonment for a violation of this offense shall not be subject to suspension or parole. This subsection shall not apply to any license revocations under G.S. 20-17.1; penalty for violation of G.S. 20-17.1 shall be applied as prescribed under ~~G.S. 20-28(a),~~ subsection (a).

(c) When Person May Apply For License. -- ~~Any person whose commercial driver license has been suspended or revoked or who has been disqualified from operating a commercial motor vehicle as provided in this Chapter who shall drive a commercial motor vehicle upon the highways or public vehicular areas of this State while such license is under suspension, revocation, or disqualification shall be guilty of a misdemeanor. Upon receipt of a record of a violation of this section, the Division shall impose an additional disqualification period equal to the period for which the driver was suspended, revoked, or disqualified when he violated this section. A person whose license has been revoked under this section for one year may apply for a license after 90 days. A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section~~

permanently may apply for a license after three years. Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provision of the drug laws of this State or another state when any of these violations occurred during the revocation period. The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(d) Driving While Disqualified. -- A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a misdemeanor and is disqualified for an additional period as follows:

- (1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.
- (2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.
- (3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified."

Sec. 13. G.S. 20-30(8) reads as rewritten:

- "(8) To possess more than one commercial ~~driver license~~, drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial ~~driver~~ drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official."

Sec. 14. G.S. 20-35 is amended by adding a new subsection to read:

"(c) A person may not be convicted of failing to carry a regular drivers license if, when tried for that offense, the person produces in court a regular drivers license issued to the person that was valid when the person was charged with the offense. A person may not be convicted of driving a motor vehicle without a regular drivers license if, when tried for that offense, the person shows all the following:

- (1) That, at the time of the offense, the person had an expired license.
- (2) The person renewed the expired license within 30 days after it expired and now has a drivers license.
- (3) The person could not have been charged with driving without a license if the person had the renewed license when charged with the offense."

Sec. 15. G.S. 20-37.12 reads as rewritten:

" § 20-37.12. Commercial ~~driver~~ drivers license required.

(a) On or after April 1, 1992, no person shall operate a commercial motor vehicle on the highways of this State unless he has first been issued and is in immediate possession of a commercial ~~driver~~ drivers license with applicable endorsements valid for the vehicle he is driving; provided, a person may operate a commercial motor vehicle after being issued and while in possession of a commercial driver learner's permit and while accompanied by the holder of a commercial ~~driver~~ drivers license valid for the vehicle being driven.

(b) The out-of-service criteria in 49 C.F.R. §§ 392.5 and 395.13, as adopted by the Division, apply to a person who drives a commercial motor vehicle. No person shall drive a commercial motor vehicle on the highways of this State while his driving privilege is revoked, suspended, cancelled, subject to a disqualification, or in violation of an out-of-service order.

~~(c) No person who drives a commercial motor vehicle may have more than one driver license.~~

(d) Any person who is not a resident of this State, who has been issued a commercial ~~driver~~ drivers license by his state of residence, who has that license in his immediate possession, whose privilege to drive any motor vehicle is not suspended, revoked, or cancelled, and who has not been disqualified from driving a commercial motor vehicle shall be permitted without further examination or licensure by the Division to drive a commercial motor vehicle in this State.

~~(e) Any person who takes up residence in this State on a permanent basis is exempt from the provisions of this section for 30 days from the date residence is established if he is properly licensed to~~

~~operate a commercial motor vehicle in the jurisdiction of which he is a former resident. In accordance with G.S. 20-7, a new resident of North Carolina has 30 days to obtain a license from the Division. The Commissioner may establish by rule the conditions under which the test requirements for a commercial driver drivers license may be waived for any person applying for a license pursuant to this subsection, a new resident who is licensed in another state."~~

Sec. 16. G.S. 20-37.13 reads as rewritten:

" § 20-37.13. *Commercial driving drivers license qualification standards.*

(a) No person shall be issued a commercial ~~driver~~ drivers license unless he:

- (1) Is a resident of this State;
- (2) Is 21 years of age;
- (3) Has passed a knowledge test and a skills test for driving a commercial motor vehicle ~~which complies that comply with~~ minimum federal standards established by federal regulation enumerated in 49 C.F.R., Part 383, Subparts G and H; and
- (4) Has satisfied all other requirements of the Commercial Motor Vehicle Safety Act in addition to other requirements of this Chapter or federal regulation.

The tests shall be prescribed and conducted by the ~~Division of Motor Vehicles, Division~~. Provided, a person who is at least 18 years of age may be issued a commercial ~~driver~~ drivers license if he is exempt from, or not subject to, the age requirements of the federal Motor Carrier Safety Regulations contained in 49 C.F.R., Part 391, as adopted by the Division.

(b) The Division may permit a person, including an agency of this or another state, an employer, a private driver training facility, or an agency of local government, to administer the skills test specified by this section, provided:

- (1) The test is the same as that administered by the Division: and
- (2) The third party has entered into an agreement with the Division which complies with the requirements of 49 ~~C.F.R., Part~~ C.F.R. § 383.75. The Division may charge a fee to applicants for third-party testing authority in order to investigate the applicants' qualifications and to monitor their program as required by federal law.

(c) Prior to ~~April 1, October 1, 1992~~, the Division may waive the skills test for applicants licensed at the time they apply for a commercial ~~driver~~ drivers license if:

- (1) For an application submitted by April 1, 1992, the ~~The~~ applicant has not, and certifies that he has not, at any time during the two years immediately preceding the date of

application: application done any of the following and for an application submitted after April 1, 1992, the applicant has not, and certifies that he has not, at any time during the two years preceding April 1, 1992:

- a. Had more than one ~~driver~~ drivers license, except during the 10-day period beginning on the date he is issued a ~~driver~~ drivers license, or unless, prior to December 31, 1989, he was required to have more than one license by a State law enacted prior to June 1, 1986;
 - b. Had any ~~driver~~ drivers license or driving privilege suspended, revoked, or cancelled;
 - c. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. ~~20-17; or~~ 20-17 or had any convictions for the offenses listed in G.S. 20-17.4;
 - d. Been convicted of a violation of State or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident: ~~and~~ or
 - e. Refused to take a chemical test when charged with an implied consent offense, as defined in G.S. 20-16.2; and
- (2) The applicant certifies, and provides satisfactory evidence, that he is regularly employed in a job requiring the operation of a commercial motor vehicle, and he either:
- a. Has previously taken and successfully completed a skills test that was administered by a state with a classified licensing and testing system and the test was behind the wheel in a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or
 - b. Has operated for at least two years immediately preceding the application date, the relevant two-year period under subpart (1)a. of this subsection, a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed.

(d) A commercial ~~driver~~ drivers license or learner's permit shall not be issued to a person while he is subject to a disqualification from driving a commercial motor vehicle, or while his ~~driver~~ drivers license is suspended, revoked, or cancelled in any state; nor shall a commercial ~~driver~~ drivers license be issued by any other state unless he unless the person who has applied for the license first surrenders all other driver licenses, which must be returned to the issuing states drivers licenses issued by the Division or by another state. If a

person surrenders a drivers license issued by another state, the Division must return the license to the issuing state for cancellation.

(e) A commercial driver learner's permit may be issued to an individual who holds a ~~valid regular~~ Class C ~~driver~~ drivers license who has passed the ~~necessary tests required for that license,~~ knowledge test for the class and type of commercial motor vehicle the individual will be driving. The permit is valid for a period not to exceed six months and may be renewed or reissued only once within a two-year period. The fee for a commercial driver learner's permit is five dollars (\$5.00). G.S. 20-7(m) governs the issuance of a restricted instruction permit for a prospective school bus driver."

Sec. 17. G.S. 20-37.15 reads as rewritten:

" § 20-37.15. *Application for commercial ~~driver~~ drivers license.*

(a) The application for a commercial ~~driver~~ drivers license must include the following:

- (1) The full name, current mailing address, and current residence address of the applicant;
- (2) A physical description of the person including sex, height, and eye and hair color;
- (3) Date of birth;
- (4) The applicant's social security number;
- (5) The applicant's signature;
- ~~(6) The applicant's color photograph;~~
- (7) Certifications including those required by 49 C.F.R., Part C.F.R. § 383.71(a);
- ~~(8) (7) A consent to release driving record information; and~~
- ~~(9) (8) Any other information required by the Division.~~

(b) The application must be accompanied by a nonrefundable application fee of twenty dollars ~~(\$20.00), (\$20.00).~~ This fee does not apply in any of the following circumstances:

- (1) When an individual surrenders a commercial driver learner's permit issued by the Division when submitting the application.
- (2) When the application is to renew a commercial drivers license issued by the Division.

This fee shall entitle the applicant to three attempts to pass the written knowledge test without payment of a new fee. No application fee shall be charged to an applicant eligible for a waiver under G.S. 20-37.13(c).

~~(b) (c)~~ When the holder of a commercial ~~driver~~ drivers license changes his ~~name, mailing address,~~ name or residence address, an application for a duplicate shall be made as provided in G.S. 20-7.1 and a fee paid as provided in G.S. 20-14."

Sec. 18. G.S. 20-37.16 reads as rewritten:

" § 20-37.16. *Content of license; classifications and endorsements; fees.*

(a) ~~The A commercial driver drivers~~ license must be marked 'Commercial Driver Drivers License' or 'CDL' and shall, to the maximum extent practicable, be tamper proof. It must include:

- (1) The person's name and residential address;
- (2) The person's color photograph;
- (3) A physical description of the person including sex, height, eye color, and hair color;
- (4) The person's date of birth;
- (5) The person's social security number or any number or identifier deemed appropriate by the Division;
- (6) The person's signature;
- (7) The class of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions;
- (8) The name of this State; and
- (9) The dates between which the license is valid.

(b) ~~Commercial driver licenses may be issued with the following classifications, endorsements, and restrictions: the holder of a valid commercial driver license may drive all vehicles in the class for which that license is issued, and all lesser classes of vehicles except motorcycles. Vehicles that require an endorsement shall not be driven unless the proper endorsement appears on the license. The classes of commercial drivers licenses are:~~

- (1) Class A CDL- Any combination of vehicles with a gross vehicle weight rating, GVWR, of 26,001 pounds or more, provided the GVWR of the vehicle or vehicles being towed is in excess of 10,000 pounds. A Class A commercial drivers license authorizes the holder to drive any Class A motor vehicle.
- (2) Class B CDL- Any single vehicle with a GVWR of 26,001 pounds or more, and any such vehicle towing a vehicle not in excess of 10,000 pounds. A Class B commercial drivers license authorizes the holder to drive any Class B motor vehicle.
- (3) Class C CDL- Any single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds comprising:
 - (1) ~~Vehicles designed to transport 16 or more passengers, including the driver; and~~
 - (2) ~~Vehicles used in the transportation of hazardous materials that require the vehicle to be placarded under 49 C.F.R., Part 172, Subpart F.~~ A Class C commercial drivers license authorizes the holder to drive any Class C motor vehicle.

(c) ~~Endorsements and restrictions will be noted on the license when appropriate in the following categories: The endorsements required to drive certain motor vehicles are as follows:~~

- ~~(1) 'H' -- Authorizes the driver to drive a vehicle transporting hazardous materials.~~
- ~~(2) "K" -- Restricts the driver to vehicles not equipped with airbrakes.~~
- ~~(3) 'T' -- Authorizes driving double trailers.~~
- ~~(4) 'P' -- Authorizes driving vehicles carrying passengers.~~
- ~~(5) 'N' -- Authorizes driving tank vehicles.~~
- ~~(6) 'X' -- Represents a combination of hazardous materials and tank vehicle endorsements.~~
- ~~(7) 'M' -- Authorizes driving a motorcycle.~~
- ~~(8) "S" -- Authorizes driving a school bus.~~

Endorsement

Vehicles That Can Be Driven

<u>H</u>	<u>Vehicles carrying hazardous materials, other than tank vehicles</u>
<u>L</u>	<u>Double trailers that are longer combination vehicles</u>
<u>M</u>	<u>Motorcycles</u>
<u>N</u>	<u>Tank vehicles not carrying hazardous materials</u>
<u>P</u>	<u>Vehicles carrying passengers</u>
<u>T</u>	<u>Double trailers other than longer combination vehicles</u>
<u>X</u>	<u>Tank vehicles carrying hazardous materials.</u>

To obtain an H or an X endorsement, an applicant must take a written test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a written test unless the person has passed a written test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years.

(d) The fee for issuance of a Class A, B, or C commercial driver drivers license is forty dollars (\$40.00). Any person applying for a special endorsement or renewal under subsection (c) of this section shall pay an additional five dollars (\$5.00) for each endorsement. The fee for each endorsement is five dollars (\$5.00). The fee fees required under this section shall be waived for persons who drive do not apply to a person whose license is restricted to driving a school

bus or school activity bus or to employees of the Driver License Section of the Division who are designated by the Commissioner.

(e) The requirements for a commercial ~~driver~~ drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial ~~driver~~ drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

- (1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes;
- (2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions; and
- (3) Farm vehicles that meet all of the following criteria:
 - a. Controlled and operated by the farmer or the farmer's employee and used exclusively for farm use;
 - b. Used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm;
 - c. Not used in the operations of a common or contract motor carrier; and
 - d. Used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation."

Sec. 19. G.S. 20-138.2 reads as rewritten:

" § 20-138.2. *Impaired driving in commercial vehicle.*

(a) Offense. -- A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

- (1) While ~~appreciably~~ under the influence of an impairing substance; or
- (2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more.

(b) Defense Precluded. -- The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(c) Pleading. -- To charge a violation of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges the defendant drove a commercial motor vehicle on a highway, street, or public vehicular area while subject to an impairing substance.

(d) **Implied Consent Offense.** -- An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2.

(e) **Punishment; Effect When Impaired Driving Offense Also Charged.** -- The offense in this section is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00), up to two years imprisonment, or both. This offense is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving under G.S. 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the Court may not exceed the maximum punishment applicable to the offense involving impaired driving under G.S. 20-138.1.

~~(f) **Limited Driving Privilege.** -- A person convicted of the offense of impaired driving under this section is not eligible for a limited driving privilege to operate a commercial motor vehicle. If a person is convicted under this section and under G.S. 20-138.1, he may be considered for a limited driving privilege for a noncommercial motor vehicle if he meets the requirements of G.S. 20-179.3(b). Such a privilege shall be for the purposes specified in G.S. 20-179.3(a) and issued according to the procedure in G.S. 20-179.3(d) and subsections (f) through (k).~~

~~If a person is convicted under this section and he had a blood alcohol concentration below 0.10, he is nonetheless eligible to apply for a Class C noncommercial license.~~

(g) **Chemical Analysis Provisions.** -- The provisions of G.S. 20-139.1 shall apply to the offense of impaired driving in a commercial motor vehicle."

Sec. 20. G.S. 20-179(q) and G.S. 20-279.1(2) are repealed.

Sec. 21. G.S. 20-179(m) reads as rewritten:

"(m) **Assessment and Treatment Required in Certain Cases.** -- If a defendant being sentenced under this section is placed on probation, he shall be required as a condition of that probation to obtain a substance abuse assessment.

The judge shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions

to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test capable of providing uniform research data, including, but not limited to, demographic information, defendant history, assessment results and recommended interventions, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department of Human Resources.

If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years. At the time of sentencing the judge shall require the defendant to pay one hundred twenty-five dollars (\$125.00). The payment of the fee of one hundred twenty-five dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to the assessing agency and (ii) seventy-five dollars (\$75.00) to either a treatment facility or to an alcohol and drug education traffic school depending upon the recommendation made by the assessing agency. ~~G.S. 20-179.1 shall not apply to defendants sentenced under this section.~~ Fees received by the Area Mental Health, Mental Retardation, and Substance Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of the local alcohol and drug education traffic school may change the length of time required to complete the school in accordance with administrative costs, provided, however that the length and the curriculum of the school shall be approved by the Commission for Mental Health, Mental Retardation and Substance Abuse Services and in no event shall the school be less than five hours in length. If the

defendant is treated by an area mental health facility. G.S. 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee. If an area mental health facility or its contractor is providing treatment or education services to a defendant pursuant to this subsection, the area facility or its contractor may require that the defendant pay the fees prescribed by law for the services before it certifies that the defendant has completed the recommended treatment or educational program. Any determinations with regard to the defendant's ability to pay the assessment fee shall be made by the judge.

In those cases in which no substance abuse handicap is identified, that finding shall be filed with the court and the defendant shall be required to attend an alcohol and drug education traffic school. When treatment is required, the treatment agency's progress reports shall be filed with the court or the Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. If the defendant is required to participate in a treatment program and he completes the recommended treatment, he does not have to attend the alcohol and drug education traffic school. Upon the completion of the court-ordered assessment and court-ordered treatment or school, the assessing or treatment agency or school shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the ~~driver's~~ drivers license of a defendant ordered to obtain assessment, participate in a treatment program or school unless it has received the original certificate of completion from the assessing or treatment agency or school or a certificate of completion sent by the agency subsequent to a court order as hereinafter provided; provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be issued unless the agency or school has received the fifty dollar (\$50.00) fee and the seventy-five dollar (\$75.00) fee as appropriate. A defendant may within 90 days after an agency decision to decline to certify, by filing a motion in the criminal case, request that a judge presiding in the court in which he was convicted review the decision of an assessment or treatment agency to decline to certify that the defendant has completed the assessment or treatment. The agency whose decision is being reviewed shall be notified at least 10 days prior to any hearing to review its decision. If the judge determines that the defendant has obtained an assessment, has completed the treatment, or has made an effort to do so that is reasonable under the circumstances, as the case may be, the judge shall order that the

agency send a certificate of completion to the Division of Motor Vehicles.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program."

Sec. 22. G.S. 20-218 reads as rewritten:

"§ 20-218. *Standard qualifications for school bus drivers: speed limit.*

(a) No person shall drive ~~or operate~~ a school bus over the ~~public roads highways or public vehicular areas~~ of North Carolina while ~~the same~~ it is occupied by children unless ~~said~~ the person ~~shall be fully trained in the operation of motor vehicles, and shall furnish~~ shall furnish to the superintendent of the schools of the county in which ~~said~~ the bus shall be operated a certificate from any representative duly designated by the Commissioner of Motor Vehicles, and from the ~~chief mechanic~~ Director of Transportation or a designee of the Director in charge of school buses in ~~said~~ the county showing that ~~he~~ the person has been examined by ~~them~~ a representative duly designated by the Commissioner of Motor Vehicles, and ~~said chief mechanic in charge of school buses in said county and that he is a fit and competent person to operate or drive a school bus over the public roads highways and public vehicular areas of the State.~~ The driver of a school bus or school activity bus must be at least 18 years of age and hold a Class 'A', 'B', or 'C' commercial driver A, B, or C commercial drivers license and a school bus driver's certificate. The driver of a school activity bus must meet the same qualifications as a school bus driver or must have a license appropriate for the class of vehicle being driven.

(b) It shall be unlawful for any person to operate or drive a school bus loaded with children over the ~~public roads highways or public vehicular areas~~ of North Carolina at a greater rate of speed than 35 miles per hour, with the following exceptions:

- (1) For school activity buses which are painted a different color from regular school buses and which are being used for transportation of students or others to or from places for participation in events other than regular classroom work, it shall be unlawful to operate such a school activity bus at a greater rate of speed than 55 miles per hour.
- (2) For school buses or special buses with a capacity of 16 pupils or less that are used to transport students who are children with special needs, it shall be unlawful to operate the buses at a greater rate of speed than 45 miles per hour.

- (3) For private school buses that pick up children at a central point and deposit the children at a single school, without picking up children along the way, it shall be unlawful to operate the buses at a greater rate of speed than 45 miles per hour.

(c) Any person violating this section shall, upon conviction, be fined not more than fifty dollars (\$50.00) or imprisoned for not more than 30 days."

Sec. 22.1. G.S. 20-28.1(c) reads as rewritten:

~~"(c) Any person whose driving privilege has been suspended or revoked under this section for 12 months may apply for a license after 90 days; any person whose license has been suspended or revoked under this section for two years may apply for a license after 12 months; any person whose license has been suspended or revoked under this section permanently may apply for a license after three years. Upon the filing of such application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted within the suspension or revocation period of a motor vehicle offense, or a violation of the alcoholic beverages laws, or drug laws of North Carolina or any other state that occurred during the period of suspension or revocation. The new license may be issued upon such terms and conditions which the Division may see fit to impose for the balance of the suspension or revocation period. When the suspension or revocation period is permanent, the terms and conditions imposed by the Division may not exceed three years. A person whose license has been revoked under this section for one year may apply for a license after 90 days. A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years. Upon the filing of an application, the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, or a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provision of the drug laws of this State or another state when any of these violations occurred during the revocation period. The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years."~~

Sec. 23. Section 8 of Chapter 672 of the 1991 Session Laws reads as rewritten:

"Sec. 8. This act becomes effective ~~July 1, 1991~~, October 1, 1991."

Sec. 24. Section 23 of this act is effective upon ratification. The remainder of this act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 485

CHAPTER 727**AN ACT TO REFORM THE ELECTION LAWS.**

The General Assembly of North Carolina enacts:

PART I. VOTER INTIMIDATION PROHIBITED.

Section 1. G.S. 163-275 reads as rewritten:

"§ 163-275. *Certain acts declared felonies.*

Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

- (1) For any person fraudulently to cause his name to be placed upon the registration books of more than one election precinct or fraudulently to cause or procure his name or that of any other person to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such person to vote legally therein, or to impersonate falsely another registered voter for the purpose of voting in the stead of such other voter;
- (2) For any person to give or promise or request or accept at any time, before or after any such primary or election, any money, property or other thing of value whatsoever in return for the vote of any elector;
- (3) For any person who is an election officer, a member of an election board or other officer charged with any duty with respect to any primary or election, knowingly to make any false or fraudulent entry on any election book or any false or fraudulent returns, or knowingly to make or cause to be made any false statement on any ballot, or to do any fraudulent act or knowingly and fraudulently omit to do any act or make any report legally required of such person;
- (4) For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election;
- (5) For any person convicted of a crime which excludes him from the right of suffrage, to vote at any primary or election without having been restored to the right of

citizenship in due course and by the method provided by law;

- (6) For any person to take corruptly the oath prescribed for voters;
- (7) For any person with intent to commit a fraud to register or vote at more than one precinct or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election;
- (8) For any registrar or any clerk or copyist to make any entry or copy with intent to commit a fraud;
- (9) For any election official or other officer or person to make, certify, deliver or transmit any false returns of any primary or election, or to make any erasure, alteration, or conceal or destroy any election ballot, book, record, return or process with intent to commit a fraud;
- (10) For any person to assault any registrar, judge of election or other election officer while in the discharge of his duty in the registration of voters or in conducting any primary or election;
- (11) For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any registrar, judge of election or other election officer in the discharge of his duties in the registration of voters or in conducting any primary or election;
- (12) For any registrar, judge of election, member of a board of elections, assistant, marker, or other election official, directly or indirectly, to seek, receive or accept money or the promise of money, the promise of office, or other reward or compensation from a candidate in any primary or election or from any source other than such compensation as may be provided by law for his services;
- (13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting;
- (14) For any officer authorized by G.S. 163-80 to register voters and any other individual to knowingly and willfully receive, complete, or sign an application to register from any voter contrary to the provisions of G.S. 163-72; or
- (15) Reserved for future codification purposes.
- (16) For any person falsely to make the certificate provided by G.S. 163-229(b)(2) or G.S. 163-250(a).
- (17) For any person, directly or indirectly, to misrepresent the law to the public through mass mailing or any other means

of communication where the intent and the effect is to intimidate or discourages potential voters from exercising their lawful right to vote."

PART II. EXTENSION OF POLL HOURS ON ELECTION DAY.

Sec. 2. G.S. 163-2 reads as rewritten:

" § 163-2. *Hours of primaries and elections.*

In all primaries, general elections, special elections, and referenda held in this State, including those held in and for municipalities and special districts, the polls shall be open at 6:30 A.M., and shall be closed at 7:30 P.M.: Provided, however, ~~that at all voting places at which voting machines are used that whenever:~~

- (1) There are insufficient numbers of ballots;
- (2) There are insufficient numbers of polling books;
- (3) There are multiple breakdowns in voting equipment;
- (4) The openings of the polls are delayed; or
- (5) There are other irregularities

which cause undue delays in the voting process, the responsible county board of elections may permit the polls to remain open until 8:30 9:30 P.M."

PART III. POLL OBSERVERS GET VOTING LISTS.

Sec. 3. G.S. 163-45 reads as rewritten:

" § 163-45. *Observers; appointment.*

The chairman of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chairman, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chairman contains the names of all persons authorized to represent such chairman's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the chairman of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, he or his campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the precinct for which appointed and must have good moral character. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the registrar of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the chairman of the

county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the chairman shall deliver one copy of the list to the registrar for each affected precinct. He shall retain the other copy. The chairman, or the registrar and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the registrar of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chairman of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and he shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting his ballot, but, subject to these restrictions, the registrar and judges of elections shall permit him to make such observation and take such notes as he may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an 'authorization to vote document' instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart."

PART IV. SEALING OF BALLOTS.

Sec. 4. G.S. 163-171 reads as rewritten:

"§ 163-171. Preservation of ballots; locking and sealing ballot boxes; signing certificates.

When the precinct count is completed after a primary or election, all ballots shall be put back in the ballot boxes from which they were taken, and the registrar and judges shall promptly lock and place a seal around the top of each ballot box, so that no ballot may be taken from or put in it. The registrar and judges shall then sign the seal on each ballot box. In the alternative, the county board of elections may permit the precinct officials to put the counted ballots back in one ballot box or more to facilitate safekeeping provided the board

prescribes an appropriate procedure to keep the different kinds of ballots separated in bundles or bags within the box.

Ballot boxes in which ballots have been placed and which have been locked and sealed as required by the preceding paragraph shall remain in the safe custody of the registrar, subject to the orders of the chairman of the county board of elections as to their disposition; provided that ballot boxes with paper ballots shall be delivered in person to the office of the county board of elections; provided further that in the case of paper ballots which have been counted either mechanically or electronically either the counting machines with the paper ballots sealed inside shall be delivered in person to the office of the county board of elections, or the paper ballots shall be placed in ballot boxes, sealed, and those boxes shall be delivered in person to the office of the county board of elections. The ballots and ballot boxes shall be delivered at a time specified by the county board of elections. No ballot box shall be opened except upon the written order of the county board of elections or upon a proper order of court.

Ballots cast in a primary or general election shall be preserved for at least two months after the primary or general election in which voted.

On each precinct return form there shall be printed a statement to be signed by the registrar and judges certifying that, after the precinct count was completed, each ballot box was properly locked, sealed, and the seals signed, as prescribed in this section, before the precinct officials left the voting place on the night of the primary or election.

Willful failure to securely lock, seal, and sign the seal on each ballot box on the night of any primary or election, and willful failure to sign the certificate on the duplicate return forms certifying that this was done, shall constitute a misdemeanor.

In the event that a recount is requested as provided by law or there is other filing of an appeal of the election results, the county board of elections shall seal and secure the ballots, ballot boxes, and voting machines within a uniform period of time set by the State Board of Elections, to the extent that such actions have not already been taken as required by law. The aforementioned items shall then be stored in locations that are securely locked by members of the county board of elections. In counties that utilize voting machines or voting systems the county board of elections shall be required to store in one location that record on which the official vote cast is recorded."

PART V. VOTER REGISTRATION AMENDMENTS.

Sec. 5.1. G.S. 163-57 reads as rewritten:

" § 163-57. *Residence defined for registration and voting.*

All registrars and judges, in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

- (1) That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.
- (2) A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this State, for temporary purposes only, with the intention of returning.
- (3) A person shall not be considered to have gained a residence in any county of this State, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.
- (4) If a person removes to another state or county within this State, with the intention of making such state or county his permanent residence, he shall be considered to have lost his residence in the state or county from which he has removed.
- (5) If a person removes to another state or county within this State, with the intention of remaining there an indefinite time and making such state or county his place of residence, he shall be considered to have lost his place of residence in this State or the county from which he has removed, notwithstanding he may entertain an intention to return at some future time.
- (6) If a person goes into another state or county, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, he shall be considered to have lost his residence in this State or county.
- (7) School teachers who remove to a county for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live in the county in which their parents or other relatives reside, and who do not have the intention of becoming residents of the county to which they have moved to teach, for purposes of registration and voting shall be considered residents of the county in which their parents or other relatives reside.
- (8) If a person removes to the District of Columbia or other federal territory to engage in the government service, he shall not be considered to have lost his residence in this State during the period of such service unless he votes there, and the place at which he resided at the time of his

removal shall be considered and held to be his place of residence.

- (9) If a person removes to a county to engage in the service of the State government, he shall not be considered to have lost his residence in the county from which he removed, unless he demonstrates a contrary intention.
- (10) For the purpose of voting a spouse shall be eligible to establish a separate domicile.
- (11) So long as a student intends to make his home in the community where he is physically present for the purpose of attending school while he is attending school and has no intent to return to his former home after graduation, he may claim the college community as his domicile. He need not also intend to stay in the college community beyond graduation in order to establish his domicile there. This subdivision is intended to codify the case law."

Sec. 5.2. G.S. 163-22 is amended by adding a new subsection to read:

"(n) The State Board of Elections shall provide specific training to county boards of elections regarding rules for registering students."

PART VI. ABSENTEE VOTING MADE EASIER.

Sec. 6.1. G.S. 163-227 reads as rewritten:

" § 163-227. State Board to prescribe form of application for absentee ballots; county to secure.

(a) Applications for Absentee Ballots Generally. -- A voter falling in any one of the categories defined in G.S. 163-226, 163-226.1 or 163-226.2 may apply for absentee ballots not earlier than 50 days prior to the statewide, county or municipal election in which he seeks to vote and not later than 5:00 P.M. on the Tuesday before that election. Subject to all other provisions contained in this Article, a voter applying for an absentee ballot shall complete the standard application form to be secured by the county board of elections, as designed and prescribed by the State Board of Elections. The form shall contain lines to be checked off by each of the kinds of voters specified below:

- (1) A voter expecting to be absent from the county of his residence all day on the day of the specified election. (G.S. 163-226(a)(1)).
- (2) A voter who is unable to be present at the voting place to vote in person on the day of the specified election because of his sickness or other physical disability occurring before 5:00 P.M. on the ~~Tuesday~~ day prior to the date of the specified election. (G.S. 163-226(a)(2)).

- (3) ~~A voter who is unable to be present at the voting place to vote in person on the day of the specified election because of his sickness or other physical disability occurring since 5:00 P.M. on the Tuesday prior to the date of the specified election. (G.S. 163-226(a)(2)).~~
- (4) A voter expecting to be absent from the county, or due to emergency disability will be unable to vote in person, or a person who qualifies under G.S. 163-226(a)(4), and who, in lieu of making application by mail, wishes to apply in person and receive a ballot which he may immediately vote in the office of the county board of elections.
- (b) Types of Applications; Instructions. --
- (1) Expected Absence from County on Election Day. -- A voter expected to be absent from the county in which registered during the entire period that the polls will be open on primary or general election day, or a near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 50 days nor later than 5:00 P.M. on the Tuesday before the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.
- The applicant shall sign his application personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form. The application form when properly filled out shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or the supervisor of elections of the county board of elections.
- (2) Absence for Sickness or Physical Disability Occurring before 5:00 P.M. on the ~~Tuesday~~ day prior to the Primary or General Election. -- A voter expecting to be unable to go to the voting place to vote in person on primary or general election day because of his sickness or other physical disability, or his near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 50 days nor later than 5:00 P.M. on the ~~Tuesday~~ day before the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The application shall be signed by the voter personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form.

The application form, when properly filled out, shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or supervisor of elections of the county board of elections of the county in which the applicant is registered.

- (3) ~~Absence for Sickness or Physical Disability Occurring after 5:00 P.M. on the Tuesday prior to Primary or General Election. -- A voter expecting to be unable to go to the voting place to vote in person on primary or general election day because of sickness or other disability occurring after 5:00 P.M. on the Tuesday before the election, or a near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which he is registered not later than 12:00 noon on the day preceding the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.~~

~~The chairman of the county board of elections shall not issue or accept an application under the provisions of this subdivision later than 12:00 noon on the day preceding the election in which the voter seeks to vote.~~

~~The application shall be signed by the voter personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness who shall sign his name in the place provided on the form.~~

~~The certificate printed on the application form below the signatures of the applicant and his subscribing witness shall be filled in and signed in the presence of a witness by a licensed physician who is attending the applicant. The witness to the physician's certificate shall sign his name in the place provided on the form.~~

~~The application form, when properly filled out, signed by or for the applicant in the presence of a subscribing witness as provided in this subdivision, and certified and signed by the attending physician in the presence of a subscribing witness, may be transmitted by mail to the chairman or supervisor of elections of the board of elections of the county in which the applicant is registered, or it may~~

~~be delivered to the chairman or supervisor of elections in person by the applicant or by his near relative.~~

- (4) 'One-Stop' Voting Procedure, in Office of the County Board of Elections. -- A voter falling in the category specified in G.S. 163-227.2 may execute an application form and proceed to vote his absentee ballot in the office of the county board of elections only.

(c) Application Forms Issued by Chairman of County Board of Elections. -- The chairman of the county board of elections shall be sole custodian of all absentee ballot application forms, but he, the secretary of the board and the supervisor of elections of the board, in accordance with one of the following two procedures, shall issue and deliver a single application form, upon request, to a person authorized to sign such an application under the provisions of this section:

- (1) The chairman, secretary or supervisor of elections may deliver the form to a voter personally or to his near relative at the office of the county board of elections for the voter's own use; or
- (2) The chairman, secretary or supervisor of elections may mail the form to a voter for his own use upon receipt of a written request from the voter or his near relative.

At the time he issues an application form, the chairman, secretary or supervisor of elections of the county board of elections shall number it and write the name of the voter in the space provided therefor at the top of the form. At the same time the chairman, secretary or supervisor of elections shall insert the name of the voter and the number assigned his application in the register of absentee ballot applications and ballots issued provided for in G.S. 163-228. If the application is requested by the voter's near relative, the chairman, secretary or supervisor of elections also shall insert that person's name in the register after the name of the voter.

The chairman, secretary or supervisor of elections shall issue only one application form to a voter or his near relative unless a form previously issued is returned to the chairman, secretary or supervisor of elections and marked 'Void' by him. In such a situation, the chairman, secretary or supervisor of elections may issue another application form to the voter or a near relative, but he shall retain the voided application form in the board's records. If the application is requested by the voter's near relative, the chairman, secretary or supervisor of elections shall write the name of the near relative on the index of near relatives, applying for

applications for absentee ballots: the index shall be in such form as may be prescribed or approved by the State Board of Elections; a separate index shall be maintained for each primary, general or special election in which absentee voting is allowed.

- (3) Applications or Absentee Ballots Transmitted by Mail or in Person. -- An application for absentee ballots shall be made and signed only by the voter desiring to use them or the voter's near relative or legal guardian and shall be valid only when transmitted to the chairman or supervisor of elections of the county board of elections by mail or delivered in person by the voter or his near relative or legal guardian.
- (4) Who Is Authorized to Request Applications for Absentee Ballots. -- A voter may personally request an application for absentee ballots or may cause such request to be made through a near relative or legal guardian. For the purpose of this Article, 'near relative or legal guardian' means spouse, brother, sister, parent, grandparent, child, or grandchild.
- (5) The form of application for persons applying to vote in a primary under the provisions of this section shall be as designed and prescribed by the State Board of Elections. No voter shall be furnished ballots for voting in a primary except the ballots for candidates for nomination in the primary of the political party with which he is affiliated at the time he makes application for absentee ballots. The official registration records of the county in which the voter is registered shall be proof of the party, if any, with which the voter is affiliated.
- (6) The county board of elections shall cause to be stamped or printed on the face of each application for absentee ballots the following legend, and the blank space in the legend to be completed:

'This application is issued for absentee ballots to be voted in the _____ (primary or general or special election) to be held in _____ County on the _____ day of _____, 19 ____.' The county board of elections shall not issue any absentee ballots on the basis of any application that does not bear the completed legend.
- (7) No applications shall be issued earlier than 60 days prior to the election in which the voter wishes to vote. Nothing herein shall prohibit the county board of elections from receiving written requests for applications earlier than 60 days prior to the election but such applications shall not be

mailed or issued to the voter in person earlier than 60 days prior to the election.

- (8) Applications for absentee ballots shall be issued only by mail or in the office of the county board of elections to the voter or a near relative or legal guardian authorized to make application. No election official shall issue applications for absentee ballots except in compliance with the provisions stated herein."

Sec. 6.2. G.S. 163-230(3) reads as rewritten:

- "(3) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. -- When the county board of elections approves an application for absentee ballots, the chairman shall promptly issue and transmit them to the voter only, and not to his near relative, in accordance with the following instructions:
- a. On the top margin of each ballot the applicant is entitled to vote, the chairman shall write or type the words 'Absentee Ballot No.' and insert in the blank space the number assigned the applicant's application in the register of applications for absentee ballots and ballots issued. He shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter.
 - b. The chairman shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, his application number and the designation of the precinct in which the voter is registered. The chairman shall leave the container-return envelope holding the ballots unsealed.
 - c. The chairman shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the applicant at the post office address stated in his application, seal the envelope, and mail it at the expense of the county board of elections, or deliver it to the applicant in person: Provided, that in case of approval of an application received after 5:00 P.M. on the Tuesday before the election under the provisions of G.S. 163-227(b)(3), G.S. 163-227(b)(2), in lieu of transmitting the ballots to the applicant in person or by mail, the chairman may

deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative of the voter."

Sec. 6.3. G.S. 163-230.1 reads as rewritten:

"§ 163-230.1. *Simultaneous issuance of absentee ballots with application.*

(a) When a qualified voter personally requests by mail an application for absentee ballots, the county board of elections shall cause to be mailed to that voter in a single package:

- (1) The official ballots the voter is entitled to vote if his application is approved;
- (2) A container-return envelope for the ballots, upon the outside of which shall be printed the appropriate application form as provided in G.S. 163-227;
- (3) A large envelope (similar to a No. 14 or larger manila envelope) in which the container-return with the ballots may be returned and on which the affidavit provided by G.S. 163-229(b) shall be printed; and
- (4) An instruction sheet.

The ballots, envelopes and instructions shall be mailed to the voter by the county board's chairman, secretary or supervisor as determined by the board and entered in its official minutes.

On the back of the large transmittal envelope shall be clearly printed or stamped the following statement:

DO NOT PLACE THE ENVELOPE CONTAINING YOUR BALLOTS INTO THIS ENVELOPE UNTIL YOU HAVE COMPLETED THE APPLICATION ON THE ENVELOPE CONTAINING YOUR BALLOTS AND SECURED THE SIGNATURE OF A WITNESS.

(b) The application shall be completed, the ballots marked, the ballots sealed in the container-return envelope, and the large envelope affidavit completed as provided in G.S. 163-227 and G.S. 163-231. The container-return envelope shall be placed in the large transmittal envelope for return to the chairman of the county board of elections.

(c) At its next official meeting after return of the completed container-return envelope and large envelope with the voter's ballots, the county board of elections shall determine whether the container-return envelope and large envelope have been properly executed. If the board determines that both the container-return envelope and large envelope have been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots.

(d) The provisions of this section shall apply only to requests received by mail from and signed by the voter individually and personally. No near relative, guardian, or other person other than the voter himself shall be permitted to apply for absentee ballots under this section.

(e) The State Board of Elections, by regulation or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section."

PART VII. MINIMUM STANDARDS FOR COUNTIES.

Sec. 7. G.S. 163-22 is amended by adding a new subsection to read:

"(o) The State Board of Elections shall promulgate minimum requirements for the number of pollbooks, voting machines and curbside ballots to be available at each precinct, such that more of such will be available at general elections and a sufficient number will be available to allow voting without excessive delay. The State Board of Elections shall provide for a training and screening program for registrars and judges. The State Board of Elections shall provide additional testing of voting machines to ensure that they operate properly even with complicated ballots.

The State Board of Elections shall require counties with voting systems to have sufficient personnel available on election day with technical expertise to make repairs in such equipment, to investigate election day problems, and assist in curbside voting."

PART VIII. CANDIDATE REPLACEMENT EXTENDED.

Sec. 8. G.S. 163-114 is amended by deleting "90 days", and substituting "75 days".

Sec. 9. This act becomes effective with respect to elections occurring on or after January 1, 1992. Section 2 of this act expires with respect to all primaries and elections occurring on or after January 1, 1995.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 506

CHAPTER 728

AN ACT TO ADOPT OAK RIDGE MILITARY ACADEMY AS THE OFFICIAL STATE MILITARY ACADEMY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 145 of the General Statutes is amended by adding a new section to read:

"§ 145-14. The State Military Academy.

Oak Ridge Military Academy, in Oak Ridge, North Carolina, as long as it remains a military academy is adopted as the official military academy of the State of North Carolina."

Sec. 2. It is the intent of the General Assembly to give Oak Ridge Military Academy an honorary designation as the official military academy of North Carolina. It is not the intent of the General Assembly to establish a new State agency or educational institution or qualify Oak Ridge Military Academy for State funds and this act confers no liability on the State.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 655

CHAPTER 729

AN ACT TO CLARIFY THE RESPECTIVE RESPONSIBILITIES
OF THE COUNTIES AND OF THE STATE FOR THE
EXPENSES INCURRED IN JURY SELECTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 9-1 reads as rewritten:

"§ 9-1. Jury commission in each county; membership; selection; oath; ~~terms~~, terms; expenses of jury system.

Not later than July 1, 1967, there shall be appointed in each county a jury commission of three members. One member of the commission shall be appointed by the senior regular resident superior court judge, one member by the clerk of superior court, and one member by the board of county commissioners. The appointees shall be qualified voters of the county, and shall serve for terms of two years. Appointees may be reappointed to successive terms. A vacancy in the commission shall be filled in the same manner as the original appointment, for the unexpired term. Each commissioner shall take an oath or affirmation that, without favor or prejudice, he will honestly perform the duties of a member of the jury commission during his term of service. The compensation of commissioners shall be fixed by the board of county commissioners, and shall be paid from the general fund of the county. All expenses necessary to carry out the provisions of this Chapter and to administer the jury system, including all data processing, document processing, supplies, postage, and other similar expenses, except as otherwise provided in this Chapter, shall be paid from the general fund of the county, except that the The clerk of superior court shall furnish clerical assistance to the commission, as necessary, or other personnel assistance, as the commission may reasonably require."

Sec. 2. This act becomes effective July 1, 1991, and applies to expenses incurred on and after that date.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 670

CHAPTER 730

AN ACT AUTHORIZING WILDLIFE PROTECTORS TO ASSIST IN THE ENFORCEMENT OF LAWS WHEN A CRIME HAS BEEN COMMITTED IN THEIR PRESENCE OR WHEN A STATE OR LOCAL LAW ENFORCEMENT OFFICER HAS REQUESTED THEIR ASSISTANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-136 is amended by adding a new subsection to read:

"(d1) In addition to law enforcement authority granted elsewhere, a protector has the authority to enforce criminal laws under the following circumstances:

- (1) When the protector has probable cause to believe that a person committed a criminal offense in his presence and at the time of the violation the protector is engaged in the enforcement of laws otherwise within his jurisdiction; or
- (2) When the protector is asked to provide temporary assistance by the head of a State or local law enforcement agency or his designee and the request is within the scope of the agency's subject matter jurisdiction.

While acting pursuant to this subsection, a protector shall have the same powers invested in law enforcement officers by statute or common law. When acting pursuant to (2) of this subsection a protector shall not be considered an officer, employee, or agent for the state or local law enforcement agency or designee asking for temporary assistance. Nothing in this subsection shall be construed to expand the authority of protectors to initiate or conduct an independent investigation into violations of criminal laws outside the scope of their subject matter or territorial jurisdiction."

Sec. 2. This act is effective on 10-1-91.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 685

CHAPTER 731

AN ACT TO PROVIDE NOTICE TO EACH SECURED PARTY OR OTHER PERSON CLAIMING AN INTEREST IN A MOTOR

VEHICLE OR VESSEL, WHEN THE HOLDER OF A LIEN
SEEKS TO ENFORCE THE LIEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44A-1 reads as rewritten:

" § 44A-1. *Definitions.*

As used in this ~~Article~~ Article:

- (1) 'Legal possessor' means
 - a. Any person entrusted with possession of personal property by an owner thereof, or
 - b. Any person in possession of personal property and entitled thereto by operation of law.
- (2) 'Lienor' means any person entitled to a lien under this Article.
- (2a) 'Motor Vehicle' has the meaning provided in G.S. 20-4.01.
- (3) 'Owner' means
 - a. Any person having legal title to the property, or
 - b. A lessee of the person having legal title, or
 - c. A debtor entrusted with possession of the property by a secured party, or
 - d. A secured party entitled to possession, or
 - e. Any person entrusted with possession of the property by his employer or principal who is an owner under any of the above.
- (4) 'Secured party' means a person holding a security interest.
- (5) 'Security interest' means any interest in personal property which interest is subject to the provisions of Article 9 of the Uniform Commercial Code, or any other interest intended to create security in real or personal property.
- (6) 'Vessel' has the meaning provided in G.S. 75A-2."

Sec. 2. G.S. 44A-3, as amended by Chapter 344 of the 1991 Session Laws, reads as rewritten:

" § 44A-3. *When lien arises and terminates.*

(a) Liens conferred under this Article arise only when the lienor acquires possession of the property and terminate and become unenforceable when the lienor voluntarily relinquishes the possession of the property upon which a lien might be claimed, or when an owner, his agent, a legal possessor, or any other person having a security or other interest in the property tenders prior to sale the amount secured by the lien plus reasonable storage, boarding and other expenses incurred by the lienor. The reacquisition of possession of property voluntarily relinquished shall not reinstate the lien. Liens

conferred under this Article do not terminate when the lienor involuntarily relinquishes the possession of the property.

~~(b) Notwithstanding the provisions of subsection (a) of this section, liens conferred under G.S. 44A-2(d) shall not terminate when the lienor involuntarily relinquishes the possession of the motor vehicle, motorboat, watercraft of any kind, or boat trailer."~~

Sec. 3. G.S. 44A-4(b) reads as rewritten:

"(b) Notice and Hearings. --

- (1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the 30-day period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ~~four dollars (\$4.00)~~ ten dollars (\$10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, ~~and~~ to the person with whom the lienor dealt if ~~different~~, different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. ~~Such~~ The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired and the Division shall notify lienor. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. Failure of the recipient to notify the Division within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is

asserted, the Division shall notify the lienor, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the Division notifies the lienor that the registered or certified mail notice has been returned as undeliverable, the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall escheat to the State and be paid immediately to the treasurer for disposition pursuant to Chapter 116B of the General Statutes. A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom the Division has mailed notice ~~to previously, pursuant to this subsection.~~ Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that two or more bona fide bids on the vehicle were received, the names, addresses and bids of the bidders, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-399.

- (2) If the property upon which the lien is claimed is other than a motor vehicle required to be registered, the lienor following the expiration of the 30-day period provided by subsection (a) shall issue notice to the person having legal title to the property, if reasonably ascertainable, and to the

person with whom the lienor dealt if different by registered or certified mail, return receipt requested. Such notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the lienor by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the lienor that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the lienor that a hearing is desired by the return of such form to the lienor. Failure of the recipient to notify the lienor within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the property against which the lien is asserted and the lienor may proceed to enforce the lien by public or private sale as provided in this section. If the lienor is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section only pursuant to the order of a court of competent jurisdiction."

Sec. 4. G.S. 44A-6.1, as enacted by Chapter 344 of the 1991 Session Laws, reads as rewritten:

"§ 44A-6.1. *Action to regain possession of a motor ~~vehicle, motorboat, watercraft of any kind, or boat trailer,~~ vehicle or vessel.*

(a) When the lienor involuntarily relinquishes possession of the property and the property upon which the lien is claimed is a motor ~~vehicle, vehicle or vessel,~~ the lienor may institute an action to regain possession of the ~~motor vehicle, motorboat, watercraft of any kind, or boat trailer~~ motor vehicle or vessel in small claims court any time following the lienor's involuntary loss of possession and following maturity of the obligation to pay charges. The lienor shall serve a copy of the summons and the complaint pursuant to G.S. 1A-1, Rule 4, on each secured party claiming an interest in the vehicle or vessel. For purposes of this section, involuntary relinquishment of possession

includes only those situations where the owner or other party takes possession of the ~~motor vehicle, motorboat, watercraft of any kind, or boat trailer~~ motor vehicle or vessel without the lienor's permission or without judicial process. If in ~~such the court~~ action the owner or other party retains possession of the ~~motor vehicle, motorboat, watercraft of any kind, or boat trailer,~~ he motor vehicle or vessel, the owner or other party shall pay the amount of the lien asserted as bond into the clerk of the court in which ~~such the~~ action is pending.

If within three days after service of the summons and complaint, as the number of days is computed in G.S. 1A-1, Rule 6, neither the defendant does not file nor a secured party claiming an interest in the vehicle or vessel files a contrary statement of the amount of the lien at the time of the filing of the complaint. the amount set forth in the complaint shall be deemed to be the amount of the asserted lien. The clerk may at any time disburse to the lienor that portion of the cash bond which is not in dispute, upon application of the lienor. The magistrate shall:

- (1) Direct appropriate disbursement of the disputed or undisbursed portion of the bond; and
- (2) Direct appropriate possession of the motor vehicle or vessel if, in the judgment of the court, the plaintiff has a valid right to a lien.

(b) Either party to an action pursuant to subsection (a) of this section may appeal to district court for a trial *de novo*."

Sec. 5. Sections 1, 2, and 4 of this act become effective October 1, 1991. Section 3 of this act is effective upon ratification and applies to any lien on a motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes that arises on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 694

CHAPTER 732

AN ACT TO PROVIDE FOR MANDATORY CERTIFICATION OF CLINICAL SOCIAL WORKERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90B-3 reads as rewritten:

" § 90B-3. *Definitions.*

The following definitions apply in this Chapter:

- (1) Board. -- ~~The (a) 'Board' means the~~ North Carolina Certification Board for Social Work.

- (2) Certified Clinical Social Worker. -- A person who is competent to function independently, who holds himself or herself out to the public as a social worker, and who offers or provides clinical social work services or supervises others engaging in clinical social work practice.
- (3) Certified Master Social Worker. -- A person who is certified under this Chapter to practice social work as a master social worker and is engaged in the practice of social work.
- (4) Certified Social Work Manager. -- A person who is certified under this Chapter to practice social work as a social work manager and is engaged in the practice of social work.
- (5) Certified Social Worker. -- A person who is certified under this Chapter to practice social work as a social worker and is engaged in the practice of social work.
- (6) Clinical Social Work Practice. -- The professional application of social work theory and methods to the psychosocial diagnosis, treatment, or prevention, of emotional and mental disorders. Practice includes the treatment of individuals, couples, families, and groups, including the use of psychotherapy and referrals to and collaboration with other health professionals when appropriate. Clinical social work practice shall not include the provision of supportive daily living services to persons with severe and persistent mental illness as defined in G.S. 122C-3(33a).
- (7) Public practice of social work. -- To perform or offer to perform services for other people that involve the application of social work values, principles, and techniques in areas such as social work services, consultation and administration, and social work planning and research.
- (8) Social Worker. -- A ~~(b) 'Social worker' is a~~ person engaging in the public practice of social work who is not certified under this Chapter as a Certified Social Worker, Certified Master Social Worker, Certified Clinical Social Worker, or Certified Social Work Manager, ~~as defined in this Chapter, Manager.~~

~~(c) A person is engaged in the 'public practice of social work' who holds himself or herself out to the public as a social worker and who offers to perform or does perform for other persons, services which involve the application of social work values, principles and techniques in areas such as social work services, consultation and administration, and social work planning and research.~~

~~(d) 'Certified Social Worker,' 'Certified Master Social Worker,' 'Certified Social Work Manager' means a person who is engaged in~~

~~the practice of social work and who is certified under subparagraphs (b), (c), (d) and (e), respectively, of G.S. 90B-7."~~

Sec. 2. G.S. 90B-4 reads as rewritten:

" § 90B-4. *Prohibitions.*

(a) ~~After January 1, 1984, except~~ Except as otherwise provided in this Chapter, it is unlawful for any person who is not certified as a social worker, master social worker, or social work manager under this Chapter, Chapter to represent himself or herself to be certified under this Chapter or hold himself or herself out to the public by any title or description denoting that he or she is certified under this Chapter.

(b) After January 1, 1992, except as otherwise provided in this Chapter, it is unlawful to engage in or offer to engage in the practice of clinical social work without first being certified under this Chapter as a clinical social worker.

(c) Nothing herein shall prohibit school social workers who are certified by the State Board of Education from practicing school social work under the title 'Certified School Social Worker.' Except as provided for certified clinical social workers, ~~Nothing nothing~~ herein shall be construed as prohibiting social workers who are not certified by the ~~North Carolina Certification Board for Social Work~~ from practicing social work. ~~Notwithstanding any other provision of law,~~ Except as provided herein for certified clinical social workers, no agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the legislative, executive or judicial branches of State government or counties, cities, towns, villages, other municipal corporations, political subdivisions of the State, public authorities, private corporations created by act of the General Assembly or any firm or corporation receiving State funds shall require the obtaining or holding of any certificate issued under this Chapter or the taking of an examination held pursuant to this Chapter as a requirement for obtaining or continuing in employment.

(d) ~~Nothing herein shall authorize the practice of medicine as defined in Article I of this Chapter or the practice of psychology as defined in Article 18A of this Chapter."~~

Sec. 3. G.S. 90B-5 reads as rewritten:

" § 90B-5. *North Carolina Certification Board for Social Work; appointments; terms; composition.*

(a) For the purpose of carrying out the provisions of this Chapter, there is hereby created the North Carolina Certification Board for Social Work which shall consist of seven members appointed by the Governor ~~in the manner hereinafter prescribed. The Governor may remove any member of the Board for neglect of duty or malfeasance~~

~~or conviction of a felony or other crime of moral turpitude, but for no other reason, as follows:~~

- (1) ~~At least two members of the Board shall be Certified Social Workers except that initial appointees shall be persons who meet the educational and experience requirements for certification as Certified Social Workers under the provisions of this Chapter; Workers or Certified Master Social Workers, two~~ three members shall be Certified Clinical Social Workers ~~except that initial appointees shall be persons who meet the educational and experience requirements for certification as Certified Clinical Social Workers under the provisions of this Chapter; Workers, and three~~ two members shall be appointed from the public at large. Composition of the Board as to the race and sex of its members shall reflect the composition of the population of the State of North Carolina.
- (2) At all times the Board shall include at least one member primarily engaged in social work education, at least one member primarily engaged in social work in the public sector, and at least one member primarily engaged in social work in the private sector.
- (3) All members of the Board shall be residents of the State of North Carolina, and ~~after the establishment of the initial Board, all members,~~ with the exception of the public members, shall be certified by the Board under the provisions of this Chapter. Professional members of the Board must be actively engaged in the practice of social work or in the education and training of students in social work, and have been for at least three years prior to their appointment to the Board. Such activity during the two years preceding the appointment shall have occurred primarily in this State.

(b) The Governor may only remove a member of the Board for neglect of duty, malfeasance, or conviction of a felony or other crime of moral turpitude.

- ~~(4) The term of office of each member of the Board shall be three years; provided, however, that of the members first appointed, three shall be appointed for terms of one year, two for terms of two years, and two for terms of three years. No member shall serve more than two consecutive three-year terms.~~

(c)(5) The term of office of each member of the Board shall be three years. No member shall serve more than two consecutive three-year terms. Each term of service on the Board shall expire on the

30th day of June of the year in which the term expires. As the term of a member expires, the Governor shall make the appointment for a full term, or, if a vacancy occurs for any other reason, for the remainder of the unexpired term.

(d)(6) Members of the Board shall receive compensation for their services and reimbursement for expenses incurred in the performance of duties required by this Chapter, at the rates prescribed in G.S. 93B-5.

(e)(7) The Board may employ, subject to the provisions of Chapter 126 of the General Statutes, the necessary personnel for the performance of its functions, and fix their compensation within the limits of funds available to the Board."

Sec. 4. G.S. 90B-7 reads as rewritten:

" § 90B-7. *Titles and qualifications for certificates.*

(a) Each person desiring to obtain a certificate from the Board shall make application to the Board upon such forms and in such manner as the Board shall prescribe, together with the required application fee established by the Board.

(b) The Board shall issue a certificate as 'Certified Social Worker' to an applicant who:

- (1) Has a bachelor's degree in a social work program from a college or university having a social work program accredited or admitted to candidacy for accreditation by the Council on Social Work Education for undergraduate curricula or has a bachelor's degree in a subject area related to human services and has completed a minimum of 18 semester hours of social work training in a social work program accredited or admitted to candidacy for accreditation by the Council on Social Work Education; and
- (2) Has passed the Board examination for the certification of persons in this classification.

(c) The Board shall issue a certificate as 'Certified Master Social Worker' to an applicant who:

- (1) Has a master's or doctor's degree in a social work program from a college or university having a social work program approved by the Council on Social Work Education; and
- (2) Has passed the Board examination for the certification of persons in this classification.

(d) The Board shall issue a certificate as a 'Certified Clinical Social Worker' to an applicant who:

- (1) Holds or qualifies for a current certificate as a Certified Master Social Worker; and
- (2) Shows to the satisfaction of the Board that he or she has had two years of clinical social work experience ~~in a clinical~~

~~setting~~ with appropriate supervision in the field of specialization in which the applicant will practice; and

- (3) Has passed the Board examination for the certification of persons in this classification.

(e) The Board shall issue a certificate as a 'Certified Social Work Manager' to an applicant who:

- (1) Holds or qualifies for a current certificate as a Certified Social Worker; and
- (2) Shows to the satisfaction of the Board that he or she has had two years of experience in an administrative setting with appropriate supervision and training; and
- (3) Has passed the Board examination for the certification of persons in this classification.

(f) The Board may issue a provisional certificate in clinical social work to a person who has a master's or doctor's degree in a social work program from a college or university having a social work program approved by the Council on Social Work Education and desires to be certified as a clinical social worker. The provisional certificate may not be issued for a period exceeding two years and the person issued the provisional certificate must practice under the supervision of a certified clinical social worker or a Board-approved alternate."

Sec. 5. G.S. 90B-10 reads as rewritten:

" § 90B-10. *Exemption from ~~academic qualifications~~. certain requirements.*

(a) Applicants who were engaged in the practice of social work before January 1, 1984, shall be exempt from the academic qualifications required by this act for Certified Social Workers and Certified Social Work Managers and shall be certified upon passing the Board examination and meeting the experience requirements, if any, for certification of persons in that classification.

(b) The following may engage in clinical social work practice without meeting the requirements of G.S. 90B-7(d):

- (1) A person who has engaged in clinical social work practice for one year prior to the effective date of this act and who properly applies for and pays the required fees for a certificate as a certified clinical social worker prior to January 1, 1993.
- (2) A student completing a clinical requirement for graduation while pursuing a course of study in social work in an institution accredited by or in candidacy status with the Council on Social Work Education.
- (3) An employee engaged in clinical social work practice exclusively for one of the following employers:

- a. The State, a political subdivision of the State, or a local government.
- b. A hospital or health care facility licensed pursuant to Article 2 of Chapter 122C of the General Statutes or Articles 5 and 6 of Chapter 131E of the General Statutes."

Sec. 6. Chapter 90B of the General Statutes is amended by adding a new section to read:

" § 90B-14. Third-party reimbursements.

Nothing in this Chapter shall be construed to authorize or require direct third-party reimbursement to persons certified under this Chapter."

Sec. 7. Any proposed substantive changes to G.S. 90B-3, 90B-4, 90B-5, 90B-7, or 90B-10 shall be reviewed by the Legislative Committee on New Licensing Boards pursuant to G.S. 120-149.3(e).

Sec. 8. This act becomes effective January 1, 1992. G.S. 90B-10(b)(3)a. is repealed effective January 1, 1997. The term of the additional Board position for clinical social worker created by this act shall commence upon the expiration of the term of the public member whose term expires first.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 727

CHAPTER 733

AN ACT TO PROVIDE FOR THE REGULATION OF BED AND BREAKFAST INNS.

The General Assembly of North Carolina enacts:

Section 1. Effective January 1, 1992, G.S. 130A-247 reads as rewritten:

" § 130A-247. Definitions.

The following definitions shall apply throughout this Part:

- (1) 'Permanent house guest' means a person who receives room or board for periods of a week or longer. The term includes visitors of the permanent house guest.
- (2) 'Private club' means an establishment which maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is not profit oriented.
- (3) 'Regular boarder' means a person who receives food for periods of a week or longer.
- (4) 'Where drink is prepared or served' means a place where drink is put together, portioned, set out or handed out in

- unpackaged portions using containers which are reused on the premises rather than single-service containers.
- (5) 'Where food is prepared or served' means a place where food is cooked, put together, portioned, set out or handed out in unpackaged portions for human consumption.
- (6) 'Bed and breakfast inn' means a business establishment of not more than 12 guest rooms that offers bed and breakfast accommodations to at least nine but not more than 23 persons per night for a period of less than one week, and that:
- a. Does not serve food or drink to the general public for pay;
 - b. Serves only the breakfast meal, and that meal is served only to overnight guests of the establishment;
 - c. Includes the price of breakfast in the room rate; and
 - d. Is the permanent residence of the owner or the manager of the establishment."

Sec. 2. Effective January 1, 1992, G.S. 130A-248(a2) reads as rewritten:

"(a2) For the protection of the public health, the Commission shall adopt rules governing the sanitation of private homes offering bed and breakfast accommodations to eight or less persons per ~~night~~, night, and rules governing the sanitation of bed and breakfast inns as defined in G.S. 130A-247. In carrying out this function, the Commission shall adopt requirements that are the least restrictive so as to protect the public health and not unreasonably interfere with the operation of bed and breakfast inns."

Sec. 3. G.S. 130A-250 reads as rewritten:

" § 130A-250. Exemptions.

This Part shall not apply to: (i) facilities which provide food or lodging to regular boarders or permanent house guests only; (ii) private clubs; (iii) curb markets operated by the State Agricultural Extension Service; and (iv) occasional fund-raising events conducted by the same person no more frequently than two consecutive days every ~~month~~, month; and private homes that occasionally offer lodging accommodations, which may include the providing of food, for two weeks or less to persons attending special events, provided those homes are not bed and breakfast homes nor bed and breakfast inns. A mobile food unit or pushcart shall be operated in conjunction with a permitted restaurant."

Sec. 4. The Department of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Governmental Operations not later than April 1, 1992, on the implementation of the requirements governing bed and breakfast inns.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 733

CHAPTER 734

AN ACT TO QUALIFY THE STATE FOR FUNDING UNDER
THE FEDERAL FARMS FOR THE FUTURE ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 61 of Chapter 106 of the General Statutes is amended by adding a new section to read:

" § 106-744. Purchase of agricultural conservation easements.

(a) A county may, with the voluntary consent of landowners, acquire by purchase agricultural conservation easements over qualifying farmland as defined by G.S. 106-737 located within a voluntary agricultural district as defined by G.S. 106-738.

(b) For purposes of this section, 'agricultural conservation easement' means a negative easement in gross restricting residential, commercial, and industrial development of land for the purpose of maintaining its agricultural production capability. Such easement:

(1) May permit the creation of not more than three lots that meet applicable county zoning and subdivision regulations; and

(2) Shall be perpetual in duration, provided that, at least 20 years after the purchase of an easement, a county may agree to reconvey the easement to the owner of the land for consideration, if the landowner can demonstrate to the satisfaction of the county that commercial agriculture is no longer practicable on the land in question.

(c) There is established a 'North Carolina Farmland Preservation Trust Fund' to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for the purchase of agricultural conservation easements, including transaction costs, and shall distribute Trust Fund monies to counties and private nonprofit conservation organizations for such purchases, including transaction costs. The Commissioner of Agriculture shall adopt rules and regulations governing the use, distribution, investment, and management of Trust Fund monies.

(d) This section shall apply to agricultural conservation easements falling within its terms. This section shall not be construed to make unenforceable any restriction, easement, covenant, or condition that does not comply with the requirements of this section.

This section shall not be construed to invalidate any farmland preservation program.

This section shall not be construed to diminish the powers of any public entity, agency, or instrumentality to acquire by purchase, gift, devise, inheritance, eminent domain, or otherwise and to use property of any kind for public purposes.

This section shall not be construed to authorize any public entity, agency, or instrumentality to acquire by eminent domain an agricultural conservation easement."

Sec. 2. This act becomes effective August 1, 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 758

CHAPTER 735**AN ACT PERTAINING TO TRAINING REQUIREMENTS FOR
TANNING EQUIPMENT OPERATORS.**

The General Assembly of North Carolina enacts:

Section 1. The rules establishing formal training requirements for tanning equipment operators which were adopted by the North Carolina Radiation Protection Commission of the Department of Environment, Health, and Natural Resources shall not become effective prior to June 1, 1992.

Sec. 2. The Radiation Protection Division of the Department of Environment, Health, and Natural Resources shall develop a training program for tanning equipment operators that meets the training rules adopted by the North Carolina Radiation Protection Commission. This training program may be developed in cooperation with and provided by the North Carolina System of Community Colleges. The Department shall ensure that the training program is available to applicants for registration, registrants and their tanning equipment operators no later than six months prior to the effective date of formal training rules adopted by the Radiation Protection Commission. If the training program is provided by the Department, the Department may charge each person trained a reasonable fee to recover the actual cost of the training program.

Sec. 3. G.S. 104E-7(7) reads as rewritten:

"(7) To provide by rule and regulation for an electronic product safety program to protect the public health and safety, which program

may authorize regulation and inspection of sources of nonionizing radiation throughout the State. The product safety program may include the establishment of minimum qualifications for the operators of these products or sources."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 775

CHAPTER 736**AN ACT TO MODIFY THE LAW REGARDING TRUSTS.**

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is to save the deduction of interests in certain trusts for which a federal estate or gift tax marital deduction is claimed and which may not otherwise qualify for the deduction.

Sec. 2. Chapter 36A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 10.

"Marital Deduction Trusts.

" § 36A-116. Marital deduction trusts.

(a) If a trust created under a will or trust agreement for the benefit of the spouse of the testator or the grantor of the trust, other than a trust which provides that upon the termination of the income interest that the entire remaining trust estate be paid to the estate of the spouse, requires that all the income of the trust be paid not less frequently than annually to the spouse and a federal estate or gift tax marital deduction is claimed with respect to the trust, then, unless the will or trust agreement specifically provides otherwise by reference to this section, any investment in or retention of unproductive property as an asset of the trust is subject to the power of the spouse to require either that the asset be made productive of income, or that it be converted to assets productive of income, within a reasonable period of time.

(b) If, but for the absence of a direction in the will or trust agreement that accrued income shall be paid to the estate of the spouse, a trust created under a will or trust agreement for the benefit of the spouse of the testator or the grantor of the trust would qualify for the federal estate tax marital deduction under section 2056(b)(7) of the Internal Revenue Code or the federal gift tax marital deduction under section 2523(f) of the Internal Revenue Code, then, unless the will or trust agreement specifically provides otherwise by reference to this section, upon the termination of the income interest all accrued or

undistributed income of the trust at the death of spouse shall be paid to the personal representative of the spouse's estate in accordance with the Principal and Income Act of 1973, Article 2 of Chapter 37 of the General Statutes."

Sec. 3. This act is effective upon ratification. Section 2 of this act applies to irrevocable trusts in existence or created on or after the date of ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 779

CHAPTER 737

AN ACT TO REGULATE RENTAL HOUSING LISTING SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-143 is amended by adding the following new subsection to read:

"(c) Notwithstanding subsections (a) and (b) of this section, a rental referral agency may charge or retain from any deposit a fee, not to exceed twenty dollars (\$20.00), even if the prospective tenant fails to obtain rental housing through its assistance, provided that the following conditions are met:

- (1) Any and all advertising for the rental referral agency discloses in a clear and conspicuous manner the agency's name, the fact that it is a 'rental referral agency' using that term, and the fact that it charges a fee; and
- (2) If a prospective tenant contacts the rental referral agency in response to an advertisement for a specific property listed by the agency and inquires about that property, the rental referral agency shall neither collect a fee nor obtain the prospective tenant's signature on a contract without first verifying that the advertised property remains available and disclosing to the prospective tenant whether or not it is still available.

(d) Prospective tenants shall apply in writing for a refund no sooner than 30 days after the date of the contract and no later than one year after the date of the contract. If the prospective tenant does not apply for a refund before one year has elapsed, the fee shall be deemed earned by the rental referral agency and may be removed from the trust account."

Sec. 2. G.S. 66-144(a) reads as rewritten:

"(a) A rental referral agency shall not make any representation that any property is available for rent unless availability has been verified

by the agency within 48 hours prior to the representation. ~~The availability of property described in media advertisements shall be verified within 48 hours prior to the appearance of the advertisement. The availability of property described in media advertisements shall be verified within eight hours before being submitted to the advertising medium and in no event earlier than 96 hours prior to publication of the advertisement."~~

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 788

CHAPTER 738

AN ACT TO REQUIRE THE ENERGY DIVISION OF THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT AND THE DEPARTMENT OF ADMINISTRATION TO STUDY THE USE OF CLEAN TRANSPORTATION FUELS IN STATE-OWNED VEHICLES AND TO DEVELOP A DEMONSTRATION PROJECT USING NATURAL GAS AS THE FUEL FOR STATE-OWNED VEHICLES.

Whereas, the federal Clean Air Act requires State and local governments to develop State implementation plans to comply with the anti-pollution requirements of the Act; and

Whereas, strict standards for mobile source emissions will come into effect in 1991 and following years; and

Whereas, domestic supplies of and feedstocks for clean transportation fuels are abundant in the United States; and

Whereas, use of these fuels can expand economic development, reduce our growing dependence on energy imports, act to balance our trade deficit, and improve national energy security; and

Whereas, the quality of life for the citizens of North Carolina can be enhanced by the development of clean transportation fuels; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Energy Division of the Department of Economic and Community Development and the Division of Motor Fleet Management of the Department of Administration shall jointly study emissions, economics, safety and other relevant aspects of clean transportation fuels as they relate to State-owned vehicles. The Energy Division and the Division of Motor Fleet Management may also develop a demonstration project using natural gas as the fuel for a

State-owned vehicle or vehicles to further analyze and verify the actual impact of clean transportation fuels on State-owned vehicles. For the purpose of this act, clean transportation fuels are: ethanol, methanol, propane (liquefied petroleum gas or LPG and compressed natural gas or CNG), and reformulated gasoline.

Sec. 2. The Energy Division of the Department of Economic and Community Development and the Division of Motor Fleet Management of the Department of Administration shall jointly report their findings and recommendations to the 1993 Session of the General Assembly by filing copies of its report with the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Legislative Library on or before the 10th legislative day of the 1993 Session.

Sec. 3. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. The Energy Division of the Department of Economic and Community Development shall utilize funds available to the Division of Energy for the purposes of this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 801

CHAPTER 739

AN ACT TO FURTHER PROVIDE FOR THE SEPARATION OF POWERS BETWEEN THE LEGISLATIVE AND EXECUTIVE BRANCHES OF GOVERNMENT BY PROVIDING THAT THE PRESIDENT PRO TEMPORE OF THE SENATE RATHER THAN THE LIEUTENANT GOVERNOR SHALL MAKE APPOINTMENTS TO CERTAIN LEGISLATIVE COMMISSIONS AND COMMITTEES AND RETURNING EXCLUSIVE CONTROL OF THE USE OF LEGISLATIVE BUILDINGS TO THE LEGISLATIVE SERVICES COMMISSION.

Whereas, (1) the President of the Senate makes or recommends appointments to the North Carolina Courts Commission; and

Whereas, (2) the President of the Senate makes or recommends appointments to the Juvenile Law Study Commission; and

Whereas, (3) the President of the Senate makes or recommends appointments to the Crime Victims Compensation Commission; and

Whereas, (4) the President of the Senate makes or recommends appointments to the North Carolina Criminal Justice Education and Training Standards Commission; and

Whereas, (5) the President of the Senate makes or recommends appointments to the North Carolina Sheriffs' Education and Training Standards Commission; and

Whereas, (6) the President of the Senate makes or recommends appointments to the Motor Vehicle Dealers' Advisory Board; and

Whereas, (7) the President of the Senate makes or recommends appointments to the State Banking Commission; and

Whereas, (8) the President of the Senate makes or recommends appointments to the Public Officers and Employees Liability Insurance Commission; and

Whereas, (9) the President of the Senate makes or recommends appointments to the Board of Governors of the North Carolina Health Care Excess Liability Fund; and

Whereas, (10) the President of the Senate makes or recommends appointments to the North Carolina Health Insurance Trust Commission; and

Whereas, (11) the President of the Senate makes or recommends appointments to the State Fire and Rescue Commission; and

Whereas, (12) the President of the Senate in certain circumstances makes or recommends appointments to the North Carolina Utilities Commission; and

Whereas, (13) the President of the Senate makes or recommends appointments to the Private Protective Services Board; and

Whereas, (14) the President of the Senate makes or recommends appointments to the Alarm Systems Licensing Board; and

Whereas, (15) the President of the Senate makes or recommends appointments to the Disciplinary Hearing Commission; and

Whereas, (16) the President of the Senate makes or recommends appointments to the State Board of Cosmetic Art Examiners; and

Whereas, (17) the President of the Senate makes or recommends appointments to the State Board of Chiropractic Examiners; and

Whereas, (18) the President of the Senate makes or recommends appointments to the North Carolina Veterinary Medical Board; and

Whereas, (19) the President of the Senate makes or recommends appointments to the State Board of Therapeutic Recreation Certification; and

Whereas, (20) the President of the Senate makes or recommends appointments to the Southern States Energy Board; and

Whereas, (21) the President of the Senate makes or recommends appointments to the Advisory Committee to the North Carolina Members of the Low-Level Radioactive Waste Management Compact Commission; and

Whereas, (22) the President of the Senate makes or recommends appointments to the North Carolina Low-Level Radioactive Waste Management Authority; and

Whereas, (23) the President of the Senate makes or recommends appointments to the Milk Commission; and

Whereas, (24) the President of the Senate makes or recommends appointments to the Northeastern Farmers Market Commission; and

Whereas, (25) the President of the Senate makes or recommends appointments to the Southeastern Farmers Market Commission; and

Whereas, (26) the President of the Senate makes or recommends appointments to the Recreation and Natural Heritage Trust Fund Board of Trustees; and

Whereas, (27) the President of the Senate makes or recommends appointments to the North Carolina Seafood Industrial Park Authority; and

Whereas, (28) the President of the Senate makes or recommends appointments to the Energy Policy Council; and

Whereas, (29) the President of the Senate makes or recommends appointments to the State School Health Advisory Committee; and

Whereas, (30) the President of the Senate makes or recommends appointments to the Council on Educational Services for Exceptional Children; and

Whereas, (31) the President of the Senate makes or recommends appointments to the State Advisory Council on Indian Education; and

Whereas, (32) the President of the Senate makes or recommends appointments to the North Carolina Teaching Fellows Commission; and

Whereas, (33) the President of the Senate makes or recommends appointments to the Commission on School Facility Needs; and

Whereas, (34) the President of the Senate makes or recommends appointments to the Educational Facilities Finance Agency; and

Whereas, (35) the President of the Senate makes or recommends appointments to the Board of Trustees of The University of North Carolina Center for Public Television; and

Whereas, (36) the President of the Senate makes or recommends appointments to the NCCAT Board of Trustees; and

Whereas, (37) the President of the Senate makes or recommends appointments to the Board of Trustees of North Carolina School of Science and Mathematics; and

Whereas, (38) the President of the Senate makes or recommends appointments to the Board of Directors of the Arboretum; and

Whereas, (39) the President of the Senate makes or recommends appointments to the Commission on Children with Special Needs; and

Whereas, (40) the President of the Senate makes or recommends appointments to the Joint Legislative Utility Review Committee; and

Whereas, (41) the President of the Senate makes or recommends appointments to the Joint Select Committee on Low-Level Radioactive Waste; and

Whereas, (42) the President of the Senate makes or recommends appointments to the Environmental Review Commission; and

Whereas, (43) the President of the Senate makes or recommends appointments to the Legislative Ethics Committee; and

Whereas, (44) the President of the Senate makes or recommends appointments to the Legislative Committee on New Licensing Boards; and

Whereas, (45) the President of the Senate makes or recommends appointments to the Agriculture, Forestry, and Seafood Awareness Study Commission; and

Whereas, (46) the President of the Senate makes or recommends appointments to the Joint Legislative Commission on Municipal Incorporations; and

Whereas, (47) the President of the Senate makes or recommends appointments to the North Carolina Study Commission on Aging; and

Whereas, (48) the President of the Senate makes or recommends appointments to the North Carolina Housing Finance Agency; and

Whereas, (49) the President of the Senate makes or recommends appointments to the North Carolina Agricultural Finance Authority; and

Whereas, (50) the President of the Senate makes or recommends appointments to the North Carolina Housing Partnership; and

Whereas, (51) the President of the Senate makes or recommends appointments to the Governor's Council on Physical Fitness and Health; and

Whereas, (52) the President of the Senate makes or recommends appointments to the North Carolina Medical Database Commission; and

Whereas, (53) the President of the Senate makes or recommends appointments to the Board of Trustees Teachers' and State Employees' Retirement System; and

Whereas, (54) the President of the Senate makes or recommends appointments to the Committee on Employee Hospital and Medical Benefits; and

Whereas, (55) the President of the Senate makes or recommends appointments to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan; and

Whereas, (56) the President of the Senate makes or recommends appointments to the Board of Trustees of the North Carolina Museum of Art; and

Whereas, (57) the President of the Senate makes or recommends appointments to the Advisory Budget Commission; and

Whereas, (58) the President of the Senate makes or recommends appointments to the State Building Commission; and

Whereas, (59) the President of the Senate makes or recommends appointments to the North Carolina Code Officials Qualification Board; and

Whereas, (60) the President of the Senate makes or recommends appointments to the North Carolina Wildlife Resources Commission; and

Whereas, (61) the President of the Senate makes or recommends appointments to the North Carolina Office of Local Government Advocacy; and

Whereas, (62) the President of the Senate makes or recommends appointments to the Emergency Medical Services Advisory Council; and

Whereas, (63) the President of the Senate makes or recommends appointments to the Committee on Inaugural Ceremonies; and

Whereas, (64) the President of the Senate makes or recommends appointments to the Administrative Rules Review Commission; and

Whereas, (65) the President of the Senate makes or recommends appointments to the Art Museum Building Commission; and

Whereas, (66) the President of the Senate makes or recommends appointments to the Advisory Committee on Abandoned Cemeteries; and

Whereas, (67) the President of the Senate makes or recommends appointments to the Andrew Jackson Historic Memorial Committee; and

Whereas, (68) the President of the Senate makes or recommends appointments to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services; and

Whereas, (69) the President of the Senate makes or recommends appointments to the Consumer and Advocacy Advisory Committee for the Blind; and

Whereas, (70) the President of the Senate makes or recommends appointments to the Child Day-Care Commission; and

Whereas, (71) the President of the Senate makes or recommends appointments to the Governor's Advisory Council on Aging; and

Whereas, (72) the President of the Senate makes or recommends appointments to the North Carolina Council on the Holocaust; and

Whereas, (73) the President of the Senate makes or recommends appointments to the Property Tax Commission; and

Whereas, (74) the President of the Senate makes or recommends appointments to the Substance Abuse Advisory Council; and

Whereas, (75) the President of the Senate makes or recommends appointments to the Environmental Management Commission; and

Whereas, (76) the President of the Senate makes or recommends appointments to the Governor's Waste Management Board; and

Whereas, (77) the President of the Senate makes or recommends appointments to the Board of Transportation; and

Whereas, (78) the President of the Senate makes or recommends appointments to the North Carolina Capital Planning Commission; and

Whereas, (79) the President of the Senate makes or recommends appointments to the North Carolina Council on Interstate Cooperation; and

Whereas, (80) the President of the Senate makes or recommends appointments to the North Carolina Human Relations Commission; and

Whereas, (81) the President of the Senate makes or recommends appointments to the Governor's Advocacy Council for Persons with Disabilities; and

Whereas, (82) the President of the Senate makes or recommends appointments to the North Carolina State Commission of Indian Affairs; and

Whereas, (83) the President of the Senate makes or recommends appointments to the Governor's Advocacy Council on Children and Youth; and

Whereas, (84) the President of the Senate makes or recommends appointments to the North Carolina Internship Council; and

Whereas, (85) the President of the Senate makes or recommends appointments to the North Carolina Public Employee Deferred Compensation Plan; and

Whereas, (86) the President of the Senate makes or recommends appointments to the North Carolina Farmworker Council; and

Whereas, (87) the President of the Senate makes or recommends appointments to the North Carolina Board of Science and Technology; and

Whereas, (88) the President of the Senate in certain circumstances makes or recommends appointment of the State Controller; and

Whereas, (89) the President of the Senate makes or recommends appointments to the North Carolina Agency for Public Telecommunications; and

Whereas, (90) the President of the Senate makes or recommends appointments to the North Carolina State Ports Authority; and

Whereas, (91) the President of the Senate makes or recommends appointments to the North Carolina Technological Development Authority; and

Whereas, (92) the President of the Senate makes or recommends appointments to the Governor's Crime Commission; and

Whereas, (93) the President of the Senate makes or recommends appointments to the Local Government Commission; and

Whereas, (94) the President of the Senate makes or recommends appointments to the General Statutes Commission; and

Whereas, (95) the President of the Senate makes or recommends appointments to the North Carolina Sentencing and Policy Advisory Commission; and

Whereas, the three boards named in the body of this act have Senators as members; and

Whereas, it has been suggested that the President Pro Tempore of the Senate make these appointments: Now, therefore.

The General Assembly of North Carolina enacts:

--JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE

Section 1. G.S. 120-70.2 reads as rewritten:

" § 120-70.2. *Appointment of members and organization.*

The Joint Committee shall consist of six sitting members of the General Assembly. Three shall be appointed by the President Pro Tempore of the Senate from the membership of the Senate and three shall be appointed by the Speaker of the House of Representatives from the membership of the House. Members will serve at the pleasure of their appointing officer and any vacancies occurring on the Joint Committee shall be filled by the presiding officer of the appropriate house. ~~The initial membership of the Joint Committee shall consist of the membership of the Utility Review Committee on June 28, 1985. A Senate cochairman and a House cochairman shall be elected by the Joint Committee from among its members. The President Pro Tempore of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. A quorum shall consist of four members.~~"

Sec. 2. G.S. 120-70.3(8) reads as rewritten:

"(8) To undertake such additional studies or evaluations as may, from time to time, be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Legislative Research Commission, or either House of the General Assembly."

--JOINT SELECT COMMITTEE ON LOW-LEVEL RADIOACTIVE WASTE

Sec. 3. G.S. 120-70.32 reads as rewritten:

"§ 120-70.32. *Membership; cochairmen; vacancies; quorum.*

The Joint Select Committee shall consist of six Senators appointed by the President Pro Tempore of the Senate and six Representatives appointed by the Speaker of the House of Representatives who shall serve at the pleasure of their appointing officer. The President Pro Tempore of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. Any vacancy which occurs on the Joint Select Committee shall be filled in the same manner as the original appointment. A quorum of the Joint Select Committee shall consist of seven members."

Sec. 4. G.S. 120-70.33(8) reads as rewritten:

"(8) To undertake such additional studies as it deems appropriate or as may from time to time be requested by ~~the President of the Senate,~~ the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, or the Joint Legislative Utility Review Committee, and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate."

--ENVIRONMENTAL REVIEW COMMISSION

Sec. 5. G.S. 120-70.42 reads as rewritten:

"§ 120-70.42. *Membership; cochairmen; vacancies; quorum.*

The Environmental Review Commission shall consist of five Senators appointed by the President Pro Tempore of the Senate, ~~the Chairman of the Senate Committee on Environment and Natural Resources,~~ five Representatives appointed by the Speaker of the House of Representatives, ~~and the Chair of the House of Representatives Committee on Basic Resources~~ who shall serve at the pleasure of their appointing officer, officer, the Chairman of the Senate Committee on Environment and Natural Resources, and the Chairman of the House of Representatives Committee on the Environment. The President Pro Tempore of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. Any vacancy which occurs on the Environmental Review Commission shall be filled

in the same manner as the original appointment. A quorum of the Environmental Review Commission shall consist of seven members."

Sec. 6. G.S. 120-70.43(7) reads as rewritten:

"(7) To undertake such additional studies as it deems appropriate or as may from time to time be requested by ~~the President of the Senate~~, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, or the Joint Select Committee on Low-Level Radioactive Waste and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate; provided that the Environmental Review Commission shall not undertake any study which the General Assembly has assigned to another legislative commission or committee."

--NORTH CAROLINA COURTS COMMISSION

Sec. 7. G.S. 7A-506 reads as rewritten:

"§ 7A-506. *Creation; members; terms; qualifications; vacancies.*

(a) The North Carolina Courts Commission is hereby created. Effective July 1, 1983, it shall consist of 24 members, six to be appointed by the Governor, six to be appointed by the Speaker of the House of Representatives, six to be appointed by the President Pro Tempore of the Senate, and six to be appointed by the Chief Justice of the Supreme Court.

(b) Of the appointees of the Chief Justice of the Supreme Court, one shall be a Justice of the Supreme Court, one shall be a Judge of the Court of Appeals, two shall be judges of superior court, and two shall be district court judges.

(c) Of the six appointees of the Governor, one shall be a district attorney, one shall be a practicing attorney, one shall be a clerk of superior court, at least three shall be members or former members of the General Assembly, and at least one shall not be an attorney.

(d) Of the six appointees of the Speaker of the House, at least three shall be practicing attorneys, at least three shall be members or former members of the General Assembly, and at least one shall not be an attorney.

(e) Of the six appointees of the President Pro Tempore of the Senate, at least three shall be practicing attorneys, at least three shall be members or former members of the General Assembly, and at least one shall be a magistrate.

(f) Of the initial appointments of each appointing authority, three shall be appointed for four-year terms to begin July 1, 1983, and three shall be appointed for two-year terms to begin July 1, 1983. Successors shall be appointed for four-year terms.

(g) A vacancy in membership shall be filled for the remainder of the unexpired term by the appointing authority who made the original appointment. A member whose term expires may be reappointed."

--JUVENILE LAW STUDY COMMISSION

Sec. 8. G.S. 7A-740 reads as rewritten:

" § 7A-740. *Creation; members; terms; qualifications; vacancies.*

(a) The Juvenile Law Study Commission is hereby created. It shall consist of 18 voting members, 14 to be appointed by the Governor, two by the President Pro Tempore of the Senate, and two by the Speaker of the House of Representatives. The members appointed by the President Pro Tempore of the Senate shall be members of the Senate at the time of their appointment; the members appointed by the Speaker of the House of Representatives shall be members of the House of Representatives at the time of their appointment. Of the members appointed by the Governor, two shall be district court judges, one from an urban district, one from a rural. Three shall be a chief court counselor and two court counselors representing the Intake Division, one from an urban district, one from a rural. Two shall be from Social Services, one from the State level and one from the county. One shall be from the Division of Youth Services. One shall be from a local facility of Community Based Alternatives. One shall be a youth member representing the youth of the State who shall be a person under the age of 21 at the time of the appointment, who shall serve for one year. One shall be a State or local representative of the Guardian Ad Litem Services of the Administrative Office of the Courts, who shall serve for two years. One shall be from Law Enforcement. One shall be from the North Carolina Juvenile Detention Association. One shall be the member of the Juvenile Justice Planning Committee of the Governor's Crime Commission recommended for appointment by the Juvenile Justice Planning Committee and shall serve for three years. The district court judges and the Social Services members shall serve for three years. The chief court counselor and the court counselors shall serve for two years. The representatives from the Division of Youth Services, Law Enforcement, Community Based Alternatives, and the Juvenile Detention Association shall serve for one year. The legislative members shall serve for two-year terms. All initial terms shall begin July 1, 1980.

(b) A vacancy in membership shall be filled by the appointing authority who made the initial appointment. When the members' terms expire, their successors shall serve for the same length of time their predecessors served. A member whose term expires may be reappointed. If, when a term expires, the appointing authority has not filled the vacancy, the member whose term has expired shall continue to serve until the appointment is made."

--SOUTHERN STATES ENERGY BOARD

Sec. 9. G.S. 104D-2(a)(3) reads as rewritten:

"(3) One member of the Senate to be appointed by the President Pro Tempore of the Senate."

--ENERGY POLICY COUNCIL

Sec. 10. G.S. 113B-3(a)(2) reads as rewritten:

"(2) Two members of the North Carolina Senate to be appointed by the President Pro Tempore of the Senate;".

--STATE SCHOOL HEALTH ADVISORY COMMITTEE

Sec. 11. G.S. 115C-81(e)(6)c. reads as rewritten:

"c. The committee shall consist of 17 members: 10 appointed by the Governor, two by the State Board of Education, one by the Speaker of the House of Representatives, one by the President Pro Tempore of the Senate, and three ex officio members: the Chief, Office of Health Education, Department of Human Resources; the Chief, State Health Planning and Development Agency, Department of Human Resources; and the Superintendent of Public Instruction, or their designees. The Governor's appointees shall be named in the following manner: one physician from a list of three names submitted by the North Carolina Medical Society; one physician from a list of three names submitted by the North Carolina Pediatric Society; one physician from a list of three names submitted by the North Carolina Chiropractic Association; one registered nurse from a list of three names submitted by the North Carolina Nurses' Association; one dentist from a list of three names submitted by the North Carolina Dental Society; one member from a list of three names submitted by the North Carolina Medical Auxiliary; one member from a list of three names submitted by the North Carolina Congress of Parents and Teachers, Inc.; one member

from a list of three names submitted by the North Carolina Association for Health, Physical Education, and Recreation; one member from a list of three names submitted by the North Carolina Public Health Association; one member from a list of three names submitted by the North Carolina College Conference on Professional Preparation in Health and Physical Education. The State Board nominees shall represent local school administrative units and shall have been recommended by the Superintendent of Public Instruction. The Speaker's nominee shall be a member of the North Carolina House of Representatives and the President Pro Tempore of the Senate's nominee shall be a member of the Senate."

--COUNCIL ON EDUCATIONAL SERVICES FOR EXCEPTIONAL CHILDREN

Sec. 12. G.S. 115C-121(b) reads as rewritten:

"(b) The Council shall consist of 17 members to be appointed as follows: two members appointed by the Governor; two members of the Senate appointed by the ~~Lieutenant Governor~~ President Pro Tempore; two members of the House of Representatives appointed by the Speaker of the House; and 11 members appointed by the State Board of Education. Of those members of the Council appointed by the State Board one member shall be selected from each congressional district within the State, and the members so selected shall be composed of at least one person representing each of the following: handicapped individuals, parents or guardians of children with special needs, teachers of children with special needs, and State and local education officials and administrators of programs for children with special needs. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The board shall promulgate rules or regulations to carry out this subsection.

Ex officio members of the Council shall be the following:

- (1) The Secretary of the Department of Human Resources or the Secretary's designee;
- (2) The Secretary of the Department of Correction or the Secretary's designee;
- (3) A representative from The University of North Carolina Planning Consortium for Children with Special Needs; and
- (4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education shall be for two years. The term for members appointed by the State Board of Education shall be for four years. No person shall serve more than two consecutive four-year terms.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly."

--STATE ADVISORY COUNCIL ON INDIAN EDUCATION

Sec. 13. G.S. 115C-210.1(a) reads as rewritten:

"(a) Two legislative members (one senator appointed by the President Pro Tempore of the Senate and one representative appointed by the Speaker of the House);".

--COMMISSION ON CHILDREN WITH SPECIAL NEEDS

Sec. 14. G.S. 120-58 reads as rewritten:

" § 120-58. *Creation; appointment of members.*

There is created a Commission on Children with Special Needs to consist of three Senators and one physician licensed to practice in the State of North Carolina, and who is actively involved in the private practice of pediatrics, appointed by the President Pro Tempore of the Senate, three Representatives and one public member appointed by the Speaker of the House, and three parents of children with special needs and one public member appointed by the Governor."

--LEGISLATIVE ETHICS COMMITTEE

Sec. 15. G.S. 120-99 reads as rewritten:

" § 120-99. *Creation; composition.*

The Legislative Ethics Committee is created to consist of a chairman and eight members, four Senators appointed by the President Pro Tempore of the Senate, two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader, and four members of the House of Representatives appointed by the Speaker of the House, two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader.

The President Pro Tempore of the Senate shall designate a member of the General Assembly as chairman of the Committee in odd-numbered years, and the Speaker of the House shall designate a member of the General Assembly as chairman of the Committee in even-numbered years. The chairman will vote only in the event of a tie vote.

The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that the chairman shall sign all subpoenas on behalf of the Committee."

--LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Sec. 16. G.S. 120-149.6 reads as rewritten:

"§ 120-149.6. *Legislative Committee on New Licensing Boards.*

(a) The Legislative Committee on New Licensing Boards is created to consist of a Chairman and eight members, four Senators appointed by the President Pro Tempore of the Senate, four members of the House of Representatives appointed by the Speaker of the House and the Chairman to be appointed as provided herein.

(b) The President Pro Tempore of the Senate shall appoint a member of the Senate as Chairman upon the effective date of this Article who shall serve a term beginning with the effective date of this Article and expiring upon the organization of the General Assembly in 1989. Thereafter, the Speaker of the House and the President Pro Tempore of the Senate shall alternate the appointment of the Chairman to serve during each biennial session of the General Assembly. The Chairman may vote only in the event of a tie vote. The members of the Committee shall likewise serve biennial terms. If the office of Chairman or any member shall become vacant, the vacancy shall be filled for the unexpired term by the authority making the initial appointment. Five members shall constitute a quorum of the Committee.

(c) The Committee may meet on days when the members of the General Assembly are entitled to subsistence pursuant to G.S. 120-3.1. The Committee is authorized to use the facilities of the State Legislative Building and Legislative Office Building. Clerical and professional staff shall be provided by the Legislative Services Commission."

--JOINT LEGISLATIVE COMMISSION ON MUNICIPAL INCORPORATIONS

Sec. 17. G.S. 120-158(b) reads as rewritten:

"(b) The Commission shall consist of six members, appointed as follows:

- (1) Two Senators appointed by the President Pro Tempore of the Senate;
- (2) Two House members appointed by the Speaker;
- (3) One city manager or elected city official, appointed by the President Pro Tempore of the Senate from a list of three

eligible persons nominated by the North Carolina League of Municipalities; and

- (4) One county commissioner or county manager, appointed by the Speaker from a list of three eligible persons nominated by the North Carolina Association of County Commissioners."

--NORTH CAROLINA STUDY COMMISSION ON AGING

Sec. 18. G.S. 120-182(3) reads as rewritten:

- "(3) Eight shall be appointed by the President Pro Tempore of the Senate, five being members of the Senate at the time of their appointment, and at least two being planners for or providers of health, mental health, or social services to older adults."

Sec. 19. G.S. 120-183 reads as rewritten:

" § 120-183. *Commission; meetings.*

The Commission shall have its initial meeting no later than October 1, 1987, at the call of the President of the Senate and Speaker of the House. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall appoint a cochairman each from the membership of the Commission. The Commission shall meet upon the call of the cochairmen."

--GOVERNOR'S COUNCIL ON PHYSICAL FITNESS AND HEALTH

Sec. 20. G.S. 130A-33.41(1) reads as rewritten:

- "(1) The composition of the Council shall be as follows: one member of the Senate appointed by the President Pro Tempore of the Senate, and one member of the House of Representatives appointed by the Speaker of the House of Representatives, and eight persons from the health care professions, the fields of business and industry, physical education, recreation, sports and the general public. The eight nonlegislative members of the Council shall be appointed by the Governor to serve at his pleasure."

--COMMITTEE ON EMPLOYEE HOSPITAL AND MEDICAL BENEFITS

Sec. 21. G.S. 135-38 reads as rewritten:

" § 135-38. *Committee on Employee Hospital and Medical Benefits.*

(a) The Committee on Employee Hospital and Medical Benefits shall consist of 12 members as follows:

- (1) The President Pro Tempore of the Senate;
- (2) The Majority Leader of the Senate;

- (3) The Chairman of the Senate Committee on Appropriations;
- (4) Repealed by Session Laws 1987, c. 61, s. 1.
- (5) A Cochairman of the Senate Committee on Finance designated by the President Pro Tempore of the Senate;
- (6) Two other members of the Senate appointed by the President Pro Tempore of the Senate; and
- (7)-(10) Repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1038, s. 19.1.
- (11) Six members of the House appointed by the Speaker.

(b) The members of the Committee who are members because of the offices they hold shall remain on the Committee for the duration of their terms in those offices. The President Pro Tempore of the Senate and Speaker of the House shall appoint the other members of the Committee for two-year terms beginning on July 1 of odd-numbered years.

(c) The Committee shall review programs of hospital, medical and related care provided by Part 3 of this Article as recommended by the Executive Administrator and Board of Trustees of the Plan. The Executive Administrator and the Board of Trustees shall provide the Committee with any information or assistance requested by the Committee in performing its duties under this Article.

(d) The time members spend on Committee business shall be considered official legislative business for purposes of G.S. 120-3."

--ADVISORY BUDGET COMMISSION

Sec. 22. G.S. 143-4 reads as rewritten:

" § 143-4. *Advisory Budget Commission.*

(a) Five Senators appointed by the President Pro Tempore of the Senate, five Representatives appointed by the Speaker of the House and five persons appointed by the Governor shall constitute the Advisory Budget Commission. If the Governor appoints any members of the General Assembly to the Advisory Budget Commission, he must appoint an equal number from the Senate and House of Representatives.

(b) The Chairman of the Advisory Budget Commission shall also receive an additional two thousand five hundred dollars (\$2,500) payable in quarterly installments, for expenses.

The members of the Advisory Budget Commission shall receive no per diem compensation for their services, but shall receive the same subsistence and travel allowance as are provided for members of the General Assembly for services on interim legislative committees.

(c) The Governor may call a meeting of the Commission during the period beginning with the convening of each regular session and

ending 30 days later. Otherwise, meetings of the Commission may be called by the Governor or by the chairman.

Members of the Commission shall take the oath of office at or before the first meeting of the Commission they attend.

The Office of State Budget and Management, under the direction of the State Budget Officer, may serve as staff to the Commission. The State Budget Officer shall designate a secretary to the Commission.

(d) After the agenda for a meeting has been delivered to the members of the Commission, no other item shall be considered at that meeting except upon the approval of a majority of the members present and voting.

Except for the Governor, persons who are not members of the Commission may address the Commission only at the invitation of the Governor, the chairman, or a majority of the members present and voting.

A vacancy in one of the seats on the Commission shall be filled by appointment by the officer who appointed the person causing the vacancy.

(e) Before the end of each fiscal year or as soon thereafter as practicable, the Advisory Budget Commission shall contract with a competent certified public accountant who is in no way otherwise affiliated with the State or with any agency thereof to conduct a thorough and complete audit of the receipts and expenditures of the State Auditor's office during the immediate fiscal year just ended, and to report to the Advisory Budget Commission on such audit not later than the following October first. A sufficient number of copies of such audit shall be provided so that at least one copy is filed with the Governor's Office, one copy with the Office of State Budget and Management and at least two copies filed with the Secretary of State.

(f) In all matters where action on the part of the Advisory Budget Commission is required by this Article, 10 members of the Commission shall constitute a quorum for performing the duties or acts required by the Commission."

--NORTH CAROLINA OFFICE OF LOCAL GOVERNMENT ADVOCACY

Sec. 23. G.S. 143-506.14 reads as rewritten:

"§ 143-506.14. *North Carolina Office of Local Government Advocacy created; membership; terms; meetings; compensation; powers and duties; staff; cooperation by departments.*

(a) There is established in the office of the Governor, the North Carolina Office of Local Government Advocacy. The Local Government Advocacy Council, created by Executive Order Number 22, is hereby transferred to the Office of Local Government Advocacy.

The Council shall consist of 19 persons and shall be composed as follows: six members representing county government, five of whom are the members of the Executive Committee of the North Carolina Association of County Commissioners and one who is the Executive Director of the Association; six members representing municipal government, five of whom are the members of the Executive Committee of the North Carolina League of Municipalities and one who is the Executive Director of the League; two Senators appointed by the President Pro Tempore of the Senate; two members of the House of Representatives, appointed by the Speaker of the House of Representatives and three at-large members appointed by the Governor. The Association of County Commissioners and the League of Municipalities representatives shall serve terms on the Council consistent with their terms as Executive Committee members appointed by the Governor. The members appointed by the President of the Senate and the Speaker of the House of Representatives shall serve until January 15, 1981, or until their successors are appointed, whichever is later. Their successors shall serve a term of two years. The at-large members shall serve at the pleasure of the Governor for a period of two years. The Chairman and Vice-Chairman shall be the President of the Association of County Commissioners and the President of the League of Municipalities respectively, with the office rotating between the League and Association annually. Provided that no person among those appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall serve on the Council for more than two complete consecutive terms.

(b) The Council shall meet at least once each quarter and may hold special meetings at any time at the call of the Chairman or the Governor.

The members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(c) Membership. The Local Government Advocacy Council shall not be considered a public office and, to that end membership may be held in addition to the number of offices authorized by G.S. 128-1.1.

(d) The general duties and responsibilities of the Council are:

- (1) To advocate on behalf of local government and to advise the Governor and his Cabinet on the development and implementation of policies and programs which directly affect local government;
- (2) To function as liaison for State and local relations and communications;

- (3) To identify problem areas and recommend policies with respect to State, regional and local relations; and
- (4) To review, monitor and evaluate current and proposed State program policies, practices, procedures, guidelines and regulations with respect to their effect on local government.

(e) The Office of Local Government Advocacy shall be staffed by persons knowledgeable of local government who shall seek to carry out the directives of the Local Government Advocacy Council by:

- (1) Advocating the policies of the Council with various State departments;
- (2) Serving as a communications liaison between the Local Government Advocacy Council and the various State departments; and
- (3) Functioning as an ombudsman for the resolution of local government problems.

(f) It shall be the responsibility of each respective Cabinet department head to: (i) insure that departmental employees make every effort to cooperate with and provide support to the Local Government Advocacy Council in keeping with the intent of this Article; and (ii) advise the Local Government Advocacy Council of their proposed policies and plans for review in terms of their effect on local government."

--EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL

Sec. 24. G.S. 143-510 reads as rewritten:

" § 143-510. *Emergency Medical Services Advisory Council.*

(a) There is hereby created an Emergency Medical Services Advisory Council composed of 21 members to consult with the Secretary of the Department of Human Resources in the administration of this article. The Secretary of the Department of Human Resources shall appoint 17 members with at least one member representing each of the following categories:

- (1) Physicians licensed to practice medicine versed in treatment of trauma and suddenly occurring illnesses.
- (2) Emergency room nurses.
- (3) Hospitals.
- (4) Providers of ambulance service (including rescue squads).
- (5) Local government, and
- (6) The general public.

The ~~Lieutenant Governor~~ President Pro Tempore of the Senate shall appoint two members from the Senate, and the Speaker of the House of Representatives shall appoint two members from the House of Representatives.

(b) Members appointed by the Secretary of the Department of Human Resources shall hold office for a term of four years beginning July 1, 1973, and quadrennially thereafter, except the terms of the members first taking office shall expire, as designated at the time of appointment, six at the end of the second year, six at the end of the third year, and five at the end of the fourth year. Members appointed by the ~~Lieutenant Governor~~ President Pro Tempore and the Speaker shall serve for two years coinciding with the term for which they were elected to the General Assembly. Vacancies shall be filled by the office making the initial appointment and for the remainder of the unexpired term only.

(c) The Council shall meet at least once each quarter and at the call of the Secretary of the Department of Human Resources. The Council shall elect its chairman annually.

(d) Council members who are not members of the General Assembly or State employees or officers shall receive per diem, travel, and subsistence as provided by G.S. 138-5 while engaged in Council business or attending Council meetings. Council members who are members of the General Assembly shall receive travel and subsistence allowances as provided by G.S. 120-3.1. Council members who are State employees or officers shall receive travel and subsistence as provided by G.S. 138-6."

--COMMITTEE ON INAUGURAL CEREMONIES

Sec. 25. G.S. 143-533 reads as rewritten:

" § 143-533. *Creation, appointment of members; members ex officio.*

There is hereby created a Committee on Inaugural Ceremonies to consist of three representatives to be appointed by the Speaker of the House, (or a person designated by the Speaker) three senators to be appointed by the President Pro Tempore of the Senate, three citizens to be appointed by the Governor, and three citizens to be appointed by the Governor-elect upon certification of his election. Of the three citizens appointed to the Committee by the Governor, only two may be of the same political party. The Speaker of the House, the President of the Senate, (or a person designated by the President of the Senate), the Governor, and, upon certification of their election, all members-elect of the Council of State, shall be ex officio members of the Committee on Inaugural Ceremonies."

Sec. 26. G.S. 143-539 reads as rewritten:

" § 143-539. *Offices; per diem and allowances of members; payments from appropriations.*

~~The facilities of the State Legislative Building shall be made available to the Committee on Inaugural Ceremonies by the Legislative Services Officer for the Committee's work. The Department of~~

Administration shall provide office space to the Committee. The members of the Committee, including ex officio members, shall be paid such per diem, subsistence and travel allowances as are prescribed by law for State boards and commissions generally. All payments for purposes authorized by this Article shall be paid by the State Treasurer upon written authorization of the chairman of the Committee, from funds appropriated to the Contingency and Emergency Budget."

--CONSUMER AND ADVOCACY ADVISORY COMMITTEE FOR THE BLIND

Sec. 27. G.S. 143B-164(a) reads as rewritten:

"(a) The Consumer and Advocacy Advisory Committee for the Blind of the Department of Human Resources shall consist of the following members:

- (1) One member of the North Carolina Senate to be appointed by the ~~Lieutenant Governor~~ President Pro Tempore of the Senate;
- (2) One member of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;
- (3) President and Vice-President of the National Federation of the Blind of North Carolina;
- (4) President and Vice-President of the North Carolina Council of the Blind;
- (5) President and Vice-President of the North Carolina Association of Workers for the Blind;
- (6) President and Vice-President of the North Carolina Chapter of the American Association of Workers for the Blind;
- (7) Chairman of the State Council of the North Carolina Lions and Executive Director of the North Carolina Lions Association for the Blind, Inc.;
- (8) Chairman of the Concession Stand Committee of the Division of Services for the Blind of the Department of Human Resources; and
- (9) Executive Director of the North Carolina Society for the Prevention of Blindness, Inc.

With respect to members appointed from the General Assembly, these appointments shall be made in the odd-numbered years, and the appointments shall be made for two-year terms beginning on the first day of July and continuing through the 30th day of June two years thereafter; provided, such appointments shall be made within two weeks after ratification of this act, and the first members which may be so appointed prior to July 1 of the year of ratification shall serve

through the 30th day of June of the second year thereafter. If any Committee member appointed from the General Assembly ceases to be a member of the General Assembly, for whatever reason, his position on the Committee shall be deemed vacant. In the event that either Committee position which is designated herein to be filled by a member of the General Assembly becomes vacant during a term, for whatever reason, a successor to fill that position shall be appointed for the remainder of the unexpired term by the person who made the original appointment or his successor. Provided members appointed by the ~~Lieutenant Governor~~ President Pro Tempore of the Senate and the Speaker of the House shall not serve more than two complete consecutive terms.

With respect to the remaining Committee members, each officeholder shall serve on the Committee only so long as he holds the named position in the specified organization. Upon completion of his term, failure to secure reelection or appointment, or resignation, the individual shall be deemed to have resigned from the Committee and his successor in office shall immediately become a member of the Committee. Further, if any of the above-named organizations dissolve or if any of the above-stated positions no longer exist, then the successor organization or position shall be deemed to be substituted in the place of the former one and the officeholder in the new organization or of the new position shall become a member of the Committee."

--NORTH CAROLINA CAPITAL PLANNING COMMISSION

Sec. 28. G.S. 143B-374 reads as rewritten:

"§ 143B-374. *North Carolina Capital Planning Commission -- members; selection; quorum; compensation.*

(a) The North Carolina Capital Planning Commission of the Department of Administration shall consist of the following ex officio members: the Governor of North Carolina who shall serve as chairman; all members of the Council of State including the Lieutenant Governor (or a person designated by the Lieutenant Governor), who shall serve as vice-chairman; the Speaker (or a person designated by the Speaker), and four members of the North Carolina House of Representatives, and four members of the North Carolina Senate; and a representative of the City of Raleigh to be designated by the City Council of Raleigh to serve a two-year term to expire at the same date city council members' terms expire. The ~~Lieutenant Governor~~ President Pro Tempore of the Senate shall appoint the four members of the Senate on or before July 1, 1975, for two-year terms to expire at the same date General Assembly members' terms expire. The Speaker of the House of Representatives shall

appoint the four members of the House on or before July 1, 1975, for two-year terms to expire at the same date General Assembly members' terms expire.

Public officers who are made members of the Commission shall be deemed to serve ex officio.

(b) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Administration.

All minutes, records, plans, and all other documents of public record of the State Capital Planning Commission, the Heritage Square Commission, and the former North Carolina Capital Planning Commission shall be turned over to the Department of Administration.

The Commission shall meet quarterly, and at other times at the call of the chairman."

--NORTH CAROLINA COUNCIL ON INTERSTATE COOPERATION

Sec. 29. G.S. 143B-380(3) reads as rewritten:

"(3) Three Senators designated by the President Pro Tempore of the Senate;"

Sec. 30. G.S. 143B-382 reads as rewritten:

"§ 143B-382. *North Carolina Council on Interstate Cooperation -- Senate members.*

The President Pro Tempore of the Senate shall, on or before July 1 of the year in which each regular session of the General Assembly is held, designate three members of the Senate as members of the Council on Interstate Cooperation."

--GOVERNOR'S ADVOCACY COUNCIL ON CHILDREN AND YOUTH

Sec. 31. G.S. 143B-415 reads as rewritten:

"§ 143B-415. *Governor's Advocacy Council on Children and Youth -- members; selection; quorum; compensation.*

(a) The Governor's Advocacy Council on Children and Youth shall consist of 17 members. The composition of the Council shall be as follows: two members appointed by the President Pro Tempore of the Senate from the membership of the Senate; two members selected by the Speaker of the House of Representatives from the membership of the House of Representatives; 13 members appointed by the Governor.

Of the members appointed by the Governor, at least one shall come from each congressional district in accordance with G.S. 147-12(3)b.

In selecting the 13 members of the Council, the Governor shall select nine public-spirited adult citizens who have an interest in and knowledge of children and youth, persons who work with children or representatives of organizations concerned with problems of children and youth. The remaining four members to be appointed by the Governor shall consist of two youths of each sex who are 18 years of age or under at the time of their appointments.

(b) The initial members of the Council shall be the members of the former Governor's Advocacy Council on Children and Youth of the Department of Human Resources whose terms shall expire on the date they would have, had said Council of the Department of Human Resources not been transferred. At the end of the respective terms of office of the initial members of the Council, the appointment of all members shall be as provided in this section and for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, death, dismissal, or disability of a member shall be for the balance of the unexpired term.

(c) The Governor may remove any member of the Council appointed by the Governor.

The Governor shall designate from the membership of the Council a chairman and a vice-chairman to serve at his pleasure.

The Council shall meet at least quarterly and upon the call of the chairman or upon written request of at least nine members.

The members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

(d) All clerical and other services required by the Council shall be supplied by the Secretary of Administration."

--GOVERNOR'S CRIME COMMISSION

Sec. 32. G.S. 143B-478(b)(4) reads as rewritten:

"(4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of this section shall be appointed by the Lieutenant Governor President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the

General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503)."

--GENERAL STATUTES COMMISSION

Sec. 33. G.S. 164-14 reads as rewritten:

" § 164-14. *Membership; appointments; terms; vacancies.*

(a) The Commission shall consist of 12 members, who shall be appointed as follows:

- (1) One member, by the president of the North Carolina State Bar;
- (2) One member, by the General Statutes Commission;
- (3) One member, by the dean of the school of law of the University of North Carolina;
- (4) One member, by the dean of the school of law of Duke University;
- (5) One member, by the dean of the school of law of Wake Forest University;
- (6) One member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House;
- (7) One member, by the President Pro Tempore of the Senate of each General Assembly from the membership of the Senate;
- (8) Two members, by the Governor;
- (9) One member, by the dean of the school of law of North Carolina Central University;
- (10) One member by the president of the North Carolina Bar Association;
- (11) One member, by the dean of the school of law of Campbell College.

(b) Appointments of original members of the Commission made by the president of the North Carolina State Bar, the president of the North Carolina Bar Association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest University shall be for one year. Appointments of original members of the Commission made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be for two years.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the General Statutes Commission, and the deans of the schools of law of North Carolina Central University, Duke University, the University of North Carolina, and Wake Forest University shall be made in the even-numbered years, and appointments made by the

Speaker of the House of Representatives, the President Pro Tempore of the Senate, president of the North Carolina Bar Association, the dean of the School of Law of Campbell College and the Governor shall be made in the odd-numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May 31 two years thereafter. All such appointments shall be made not later than May 31 of the year when such appointments are to become effective.

(d) If any appointment provided for by this section is not made prior to June first of the year when it should become effective, a vacancy shall exist with respect thereto, and the vacancy shall then be filled by appointment by the Governor. If any member of the Commission dies or resigns during the term for which he was appointed, his successor for the unexpired term shall be appointed by the person who made the original appointment, as provided in G.S. 164-14, or by the successor of such person; and if such vacancy is not filled within 30 days after the vacancy occurs, it shall then be filled by appointment by the Governor. In any case where an appointment authorized to be made by G.S. 164-14(c) has not been made on or before July 31 of the year in which it was due to be made, a vacancy shall exist with respect to that appointment and the General Statutes Commission at its next meeting shall by majority vote fill the vacancy by appointment.

(e) All appointments shall be reported to the secretary of the Commission.

(f) Notwithstanding the expiration of the term of the appointment, the terms of members of the General Statutes Commission shall continue until the appointment of a successor has been made and reported to the secretary of the Commission."

Sec. 34. This act applies to any appointments for terms beginning on or after January 1, 1993, and also applies to the filling of any unexpired terms where the term began before that date but the vacancy occurs on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

H.B. 89

CHAPTER 740

AN ACT TO CHANGE THE REGISTRATION AND REPORTING REQUIREMENTS FOR LOBBYISTS AND THEIR PRINCIPALS AND TO PROHIBIT CAMPAIGN FUND-RAISING FROM LOBBYISTS FOR LEGISLATORS AND COUNCIL OF STATE MEMBERS WHILE THE GENERAL ASSEMBLY IS IN REGULAR SESSION.

PART I.....CHANGE IN REGISTRATION AND
REPORTING FOR LOBBYISTS AND THEIR
PRINCIPALS.

PART II.....NO-FUNDRAISING IN SESSION FROM
LOBBYISTS.

The General Assembly of North Carolina enacts:

PART I -- CHANGES IN REGISTRATION AND REPORTING.

Section 1.1. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"ARTICLE 9A.

"Lobbying.

" § 120-47.1. *Definitions.*

For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

- (1) The terms 'contribution,' 'compensation' and 'expenditure' mean any advance, conveyance, deposit, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or anything of value and any contract, agreement, promise or other obligation whether or not legally enforceable, enforceable, but those terms do not include prizes, awards, or compensation not exceeding one hundred dollars (\$100.00) in a calendar year.
- (2) ~~The term "legislative agent" shall mean any person who is employed or retained, with compensation, by another person to give facts or arguments to any member of the General Assembly during any regular or special session thereof upon or concerning any bill, resolution, amendment, report or claim pending or to be introduced. The term "legislative agent" shall include, but not be limited to, corporate officers and directors and other individuals who are full or part-time employees of other persons and whose duties or activities as legislative agents, as hereinbefore defined, are incidental to the principal purposes for which they are employed or retained. The reimbursement of actual personal travel and subsistence expenses reasonably necessary to communicate with a member or members of the General Assembly shall not be considered compensation for purposes of determining whether a person is a legislative agent under this subdivision.~~

- (3) The term 'person' means any individual, firm, partnership, committee, association, corporation or any other organization or group of persons.
- (4) The term 'legislative action' means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity.
- (5) The term 'lobbying' means:
- Influencing or attempting to influence legislative action through direct oral or written communication with a member of the General Assembly; or
 - Solicitation of others by lobbyists to influence legislative action.
- (6) The term 'lobbyist' means an individual who:
- Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying; or
 - Represents another person and receives compensation for the purpose of lobbying.
- The term 'lobbyist' shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.
- (7) The terms 'lobbyist's principal' and 'principal' mean the entity in whose behalf the lobbyist influences or attempts to influence legislative action.
- (8) The term 'person' means any individual, firm, partnership, committee, association, corporation, or any other organization or group of persons.
- (9) The General Assembly is in 'regular session' from the date set by law or resolution that the General Assembly convenes until the General Assembly either:
- Adjourns *sine die*; or
 - Recesses or adjourns for more than 10 days.

" § 120-47.2. Registration procedure.

~~(a) In each General Assembly session and for each employer, or retainer, every person employed or retained as a legislative agent in this State shall, before engaging in any activities as a legislative agent, register with the Secretary of State. If a corporation or partnership is employed or retained as a legislative counsel, and more than one partner, employee or officer of the corporation or partnership, shall act as a legislative agent on behalf of the client, then the additional individuals shall be separately listed on the registration under subsection (b), and a fee in the same amount as imposed by G.S. 120-47.3 shall be due for each such individual in excess of one. A lobbyist shall file a registration statement with the Secretary of State before engaging in any lobbying. A separate registration statement is required for each lobbyist's principal.~~

(b) The form of ~~such~~ the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as ~~legislative agent~~, a lobbyist.

(c) Each ~~legislative agent~~ lobbyist shall register again with the Secretary of State no later than 10 days after any change in the information supplied in his last registration under subsection (b). ~~Such~~ Each supplementary registration shall include a complete statement of the information that has changed.

(d) Within 20 days after the convening of each regular session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the State Legislative Library a list of all persons who have registered as ~~a legislative agent~~ lobbyists and whom they represent. A supplemental list shall be furnished periodically each 20 days thereafter as the session progresses.

(e) Each registration statement required under this Article shall be effective from the date of filing until January 1 of the following odd-numbered year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

" § 120-47.3. Registration fee.

~~Every person, corporation or association which employs any person to act as legislative agent as defined by law to promote or oppose in any manner the passage by the General Assembly of any legislation affecting the pecuniary interests of any individual, association or corporation as distinct from those of the whole people of the State, or to act in any manner as a legislative agent in connection with any such legislation. Every lobbyist's principal shall pay to the Secretary of State a fee of seventy-five dollars (\$75.00) which fee shall be due and~~

payable by either the ~~employer or the employee~~ lobbyist or the lobbyist's principal at the time of registration.

A separate registration, together with a separate registration fee of seventy-five dollars (\$75.00), shall be required for each ~~person, corporation or association~~ lobbyist's principal for which a person acts as ~~legislative agent, a lobbyist~~. Fees so collected shall be deposited in the ~~general fund~~ General Fund of the State.

" § 120-47.4. Written authority from ~~employer to be filed; copy for legislative committee, lobbyist's principal to be filed.~~

Each ~~legislative agent~~ lobbyist shall file with the Secretary of State within 10 days after his registration a written authorization to act as such, signed by ~~the person employing him, the lobbyist's principal.~~

" § 120-47.5. Contingency lobbying fees and election influence prohibited.

(a) No person shall act as a ~~legislative agent~~ lobbyist for compensation which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.

(b) No person shall attempt to influence the action of any member of the General Assembly by the promise of financial support of ~~his the~~ member's candidacy, or by threat of financial contribution in opposition to ~~his the~~ member's candidacy in any future election.

" § 120-47.6. Statements of ~~legislative agent's lobbyist's~~ lobbying expenses required.

~~Each legislative agent shall file annually, within 30 days after the final adjournment of the regular session of the General Assembly held in a calendar year, a report with respect to each person represented setting forth the date, to whom paid, and amount of each expenditure made during the previous year in connection with promoting or opposing any legislation in any manner covered by this Article.~~

(a) Each lobbyist shall file an expense report with respect to each principal within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year. The lobbyist shall file both expense reports whether or not expenditures are made.

(b) Each expense report shall set forth the date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3)

entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars (\$25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures ~~in a particular category if the total amount expended in the particular category on behalf of a person represented is~~ of twenty-five dollars (\$25.00) or less, ~~less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). A report shall be filed annually whether or not contributions or expenditures are made.~~ When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.

(c) All reports shall be in ~~such~~ the form ~~as shall be~~ prescribed by the Secretary of State and shall be open to public inspection.

(d) When a ~~legislative agent~~ lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the ~~agent~~ lobbyist of ~~his~~ the delinquency and the penalties provided by law. Within 20 days of the receipt of ~~such~~ the letter, the ~~agent~~ lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars (\$10.00). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a ~~legislative agent~~ lobbyist under this Article. No ~~legislative agent~~ lobbyist may register or reregister under this Article until he has fully complied with this section.

"§ 120-47.7. *Statements of ~~employer~~ lobbyist's principal lobbying expenses required.*

(a) ~~Each person who employs or retains a legislative agent shall file annually, within 30 days after the final adjournment of the regular session of the General Assembly held in a calendar year, a report with respect to each agent employed or retained setting~~ Each lobbyist's principal shall file an expense report within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The principal shall file a supplemental expense report, including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year. The principal shall file both expense reports whether or not expenditures are made during a reporting period.

(b) Each expense report shall set forth the ~~date, name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator who benefitted from each expenditure, and amount of each expenditure made during the previous year reporting period in connection with promoting or opposing any legislation in any manner covered by this Article.~~ lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars (\$25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to ~~legislative agents, lobbyists in connection with their lobbying activities.~~ It shall not be necessary to report expenditures in any particular category if the total amount expended in the particular category on behalf of a person represented is of twenty-five dollars (\$25.00) or less, less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection. In the category of compensation to ~~legislative agents~~ lobbyists it shall not be necessary to report the full salary, or any portion thereof, of a legislative agent who is a full-time employee of or is annually retained by the reporting employer, the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying. ~~A report shall be filed annually whether or not payments are made.~~

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection.

(d) ~~When an employer or retainer of a legislative agent~~ a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the ~~employer or retainer~~ lobbyist's principal of his the delinquency and the penalties provided by law. Within 20 days of the receipt of such the letter, the ~~employer or retainer~~ lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars (\$10.00). Filing of the required

report and payment of the late fee within the time extended shall constitute compliance with this section.

" § 120-47.8. *Persons exempted from provisions of Article.*

The provisions of this Article shall not be construed to apply to any of the following:

- (1) An individual, not acting as a ~~legislative agent, lobbyist,~~ solely engaged in expressing a personal opinion on legislative matters to his own legislative delegation or other members of the General Assembly.
- (2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a ~~legislative agent lobbyist~~ in connection with that or any other legislative matter.
- (3)
 - a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to his office and public duties.
 - b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.5.
- (4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to legislators on behalf of clients, as to the construction and effect of proposed or pending legislation where such the professional services are not otherwise, directly or indirectly, connected with legislative action.
- (5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of such the news medium.
- (6) ~~Notwithstanding the persons exempted in this section, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison~~

~~personnel with the Secretary of State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended in influencing or attempting to influence legislation, other than the salaries of regular full-time employees.~~

- (7) Members of the General Assembly.
- (8) A person responding to inquiries from a member of the General Assembly, Assembly or a legislative employee, and who engages in no further activities as a legislative agent lobbyist in connection with that or any other legislative matter.
- (9) An individual giving facts or recommendations pertaining to legislative matters to his own legislative delegation only.

" § 120-47.9. Punishment for violation.

Whoever willfully violates any provision of this Article shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000), or imprisoned not exceeding two years, or both. In addition, no ~~legislative agent lobbyist~~ who is convicted of a violation of the provisions of this Article shall in any way act as a legislative agent lobbyist for a period of two years following his conviction.

" § 120-47.10. Enforcement of Article by Attorney General.

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint made to him of violations of this Article, make an appropriate investigation thereof, and he shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

" § 120-47.11. Rules and forms.

The Secretary of State shall make, amend, and rescind any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article."

Sec. 1.2. Article 10 of Chapter 120 of the General Statutes is repealed.

PART II -- LIMITS ON FUND-RAISING IN SESSION.

Sec. 2. Chapter 163 of the General Statutes is amended by adding a new section to read:

" § 163-278.13A. No fund-raising from lobbyists for legislators or Council of State members while General Assembly is in regular session.

(a) While the General Assembly is in regular session, none of the following entities may solicit or accept a contribution from, or at the behest or recommendation of, an individual registered as a lobbyist pursuant to Article 9A of Chapter 120 of the General Statutes:

- (1) A member of the Council of State; or
- (2) A member of the General Assembly; or
- (3) A political committee the principal purpose of which is to assist a member or members of the Council of State or General Assembly.

(b) While the General Assembly is in regular session, no individual registered as a lobbyist under Article 9A of Chapter 120 of the General Statutes may make a contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section.

(c) This section does not apply to:

- (1) Any contribution made to or by a State, county or congressional district executive committee of a political party; or
- (2) Any contribution made to or solicited for a political committee that operates on a Statewide basis in conjunction with the executive committee of a political party for the purpose of assisting that party's candidates for Council of State or General Assembly; or
- (3) Any contribution made by a member of the Council of State or General Assembly to a political committee the principal purpose of which is to assist himself; or
- (4) Any contribution made to or any solicitation for a nonprofit organization under 26 U.S.C. § 501(c); or
- (5) Any contribution accepted with the intent that it be used to defray legal or other expenses incurred in connection with the contesting of election results; or
- (6) Any contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section if the member of the Council of State or General Assembly has filed an official notice of candidacy with the appropriate board of elections for any elective office, provided the contribution is for the elective office for which the member has filed.

(d) A violation of this section is a misdemeanor, but no individual or person shall be prosecuted under this section for accepting or making a contribution unless the State Board of Elections has notified the individual or person of the apparent violation in writing by certified mail, has given the individual or person an opportunity to return or to request the return of the contribution, and, within 10 days of the receipt of the notification, the individual or person has failed to return or to request the return of the contribution.

(e) For purposes of this section, the General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

(1) Adjourns *sine die*; or

(2) Recesses or adjourns for more than 10 days."

Sec. 3. Part I of this act shall become effective January 1, 1992, except for G.S. 120-47.11 which is effective on ratification. Part II of this act is effective on ratification. This act shall be implemented within funds available to the Secretary of State. Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

H.B. 126

CHAPTER 741

AN ACT TO EXTEND TO CERTAIN AIRPORT AUTHORITIES AND CERTAIN SCHOOL DISTRICTS THE AUTHORITY TO PURCHASE PROPERTY SUBJECT TO A PURCHASE MONEY SECURITY INTEREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20 reads as rewritten:

" § 160A-20. *Security interests.*

(a) ~~Cities, counties, and water and sewer authorities created under Article 1 of Chapter 162A of the General Statutes~~ Units of local government, as defined in subsection (h), may purchase or finance the purchase of real or personal property by installment contracts that create in the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(b) ~~Cities, counties, and water and sewer authorities created under Article 1 of Chapter 162A of the General Statutes~~ Units of local government, as defined in subsection (h), may finance the construction or repair of fixtures or improvements on real property by contracts that create in the fixtures or improvements, or in all or some portion of the property on which the fixtures or improvements are located, or in both, a security interest to secure repayment of moneys advanced or made available for such construction or repair.

(c) ~~Cities, counties, and water and sewer authorities created under Article 1 of Chapter 162A of the General Statutes~~ Units of local government, as defined in subsection (h), may use escrow accounts in connection with the advance funding of transactions authorized by this section, whereby the proceeds of such advance funding are invested pending disbursement.

(d) No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a ~~city, a county, or a~~

~~water and sewer authority created under Article 1 of Chapter 162A of the General Statutes~~ unit of local government to:

- (1) Continue to provide a service or activity; or
- (2) Replace or provide a substitute for any fixture, improvement, project, or property financed or purchased pursuant to such contract.

(e) A contract entered into under this section is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if it:

- (1) Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and
- (2) Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b).

(f) No deficiency judgment may be rendered against any ~~city, county, or water and sewer authority created under Article 1 of Chapter 162A of the General Statutes~~ unit of local government in any action for breach of a contractual obligation authorized by this section, and the taxing power of a ~~city or county~~ unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section.

(g) Before entering into a contract under this section involving real property, a ~~city, a county, or a water and sewer authority created under Article 1 of Chapter 162A of the General Statutes~~ unit of local government shall hold a public hearing on the contract. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(h) As used in this section, the term 'unit of local government' means any of the following:

- (1) A county.
- (2) A city.
- (3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
- (4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.
- (5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.
- (6) A local school administrative unit (i) that is located in a county that has a population of over 90,000 according to the

most recent federal decennial census and (ii) whose board of education is authorized to levy a school tax."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

H.B. 1287

CHAPTER 742

AN ACT TO APPROPRIATE FUNDS TO THE ADMINISTRATIVE OFFICE OF THE COURTS, TO AUTHORIZE ADDITIONAL COURT PERSONNEL, AND TO ADJUST FEES IN THE GENERAL COURT OF JUSTICE.

The General Assembly of North Carolina enacts:

INDIGENT PERSONS' ATTORNEY FEE FUND

Section 1. There is appropriated from the General Fund to the Judicial Department the sum of \$2,374,043 for the 1991-92 fiscal year and the sum of \$2,369,249 for the 1992-93 fiscal year for the Indigent Persons' Attorney Fee Fund.

SPECIAL CAPITAL CASE REHEARING FUND

Sec. 2. (a) There is continued in the Judicial Department the nonreverting special fund known as "The Special Capital Case Rehearing Fund." The funds shall be used to provide for related expenses in connection with resentencing hearings, related appeals, and post-conviction hearings required by the decisions of the United States Supreme Court in *McKoy v. North Carolina*, March 5, 1990, and of the Supreme Court of North Carolina upon the remand of that case, including the payment of attorneys' fees and related expenses for representation of indigent persons. The Special Capital Case Rehearing Fund shall terminate, and all funds remaining in it shall revert to the General Fund, when the Director of the Administrative Office of the Courts certifies to the State Controller that all reasonably foreseeable resentencing hearings, related appeals, and post-conviction hearings have been substantially completed.

(b) There is appropriated from the General Fund to the Judicial Department the sum of \$547,626 for the 1991-92 fiscal year and \$1,048,424 for the 1992-93 fiscal year for the purposes indicated in this section.

NEW DISTRICT COURT PERSONNEL

Sec. 3. There is appropriated from the General Fund to the Judicial Department the sum of \$46,472 for the 1991-92 fiscal year and the sum of \$44,756 for the 1992-93 fiscal year for two new magistrates.

NEW DEPUTY CLERKS OF SUPERIOR COURT

Sec. 4. There is appropriated from the General Fund to the Judicial Department the sum of \$767,516 for the 1991-92 fiscal year and the sum of \$749,564 for the 1992-93 fiscal year for 34 new deputy clerks of superior court.

NEW PUBLIC DEFENDER PERSONNEL

Sec. 5. From the funds appropriated to the Indigent Persons Attorney Fee Fund in the Judicial Department for the 1991-93 biennium, the Administrative Office of the Courts may use up to \$291,050 in the 1991-92 fiscal year and \$290,330 in the 1992-93 fiscal year for salaries, benefits, and related expenses of five new assistant public defender positions, and may use up to an additional \$291,210 in the 1992-93 fiscal year for salaries, benefits, and related expenses of five additional new assistant public defender positions.

NEW DISTRICT ATTORNEY PERSONNEL

Sec. 6. (a) There is appropriated from the General Fund to the Judicial Department the sum of \$746,789 for the 1991-92 fiscal year to be allocated for the following purposes:

- (1) To establish 10 new assistant district attorneys - \$582,800;
- (2) To establish 7 district attorneys' secretaries - \$163,989.

(b) There is appropriated from the General Fund to the Judicial Department the sum of \$736,400 for the 1992-93 fiscal year to continue the positions established in the 1991-92 fiscal year.

EXPANSION OF GUARDIAN *AD LITEM* PROGRAM

Sec. 7. There is appropriated from the General Fund to the Judicial Department the sum of \$225,000 for the 1991-92 fiscal year and the sum of \$225,000 for the 1992-93 fiscal year for transfer to the Indigent Persons' Attorney Fee Fund, Guardian *Ad Litem* Program for the following purposes:

- (1) To provide for additional contractual guardian *ad litem* fees - \$166,900 for the 1991-92 fiscal year and \$166,900 for the 1992-93 fiscal year;
- (2) To provide for additional volunteer guardian *ad litem* expenses - \$58,100 for the 1991-92 fiscal year and \$58,100 for the 1992-93 fiscal year.

NEW ADMINISTRATIVE OFFICE OF THE COURTS GENERAL ADMINISTRATION POSITIONS

Sec. 8. (a) There is appropriated from the General Fund to the Judicial Department the sum of \$119,380 for the 1991-92 fiscal year to establish staff positions within the general administration section of the Administrative Office of the Courts.

(b) There is appropriated from the General Fund to the Judicial Department the sum of \$102,256 for the 1992-93 fiscal year to

provide for the continuation of the positions established in the Administrative Office of the Courts in the 1991-92 fiscal year.

COURT INFORMATION SYSTEM EXPANSION

Sec. 9. There is appropriated from the General Fund to the Judicial Department the sum of \$453,617 for the 1991-92 fiscal year to expand and enhance the court information system maintained by the Administrative Office of the Courts.

CONTINUED PHASING IN OF NONBINDING ARBITRATION PROGRAM AND OF CUSTODY AND VISITATION MEDIATION

Sec. 10. From funds appropriated to the Judicial Department in the certified budget for the 1991-92 fiscal year, the Administrative Office of the Courts may transfer up to \$75,000 to implement nonbinding arbitration procedures in additional counties and judicial districts pursuant to G.S. 7A-37.1 and to establish local custody and visitation mediation programs in additional counties pursuant to G.S. 7A-494.

INCREASE MAXIMUM NUMBER OF MAGISTRATES AUTHORIZED FOR CERTAIN COUNTIES

Sec. 11. G.S. 7A-133 reads as rewritten:

" § 7A-133. Numbers of judges by districts; numbers of magistrates and additional seats of court, by counties.

Each district court district shall have the numbers of judges and each county within the district shall have the numbers of magistrates and additional seats of court, as set forth in the following table:

District	Judges	County	Magistrates Min.-Max.		Additional Seats of Court
1	3	Camden	1	2	
		Chowan	2	3	
		Currituck	1	2	
		Dare	3	5 8	
		Gates	2	3	
		Pasquotank	3	4	
		Perquimans	2	3	
		Martin	5	8	
2	3	Beaufort	4	5 8	
		Tyrrell	1	3	
		Hyde	2	4	
		Washington	3	4	
		Craven	7	10	Havelock
3	7	Pitt	10	12	Farmville, Ayden

		Pamlico	2	3	
		Carteret	5	8	
4	6	Sampson	6	8	
		Duplin	9	11	
		Jones	2	3	
		Onslow	8	11 14	
5	6	New Hanover		6	11
		Pender	4	6	
6A	2	Halifax	9	14	Roanoke Rapids. Scotland Neck
6B	2	Northampton	5	6	
		Bertie	4	5	
		Hertford	5	6	
7	6	Nash	7	10	Rocky Mount
		Edgecombe	4	6	Rocky Mount
		Wilson	4	6	
8	5	Wayne	5	8 11	Mount Olive
		Greene	2	4	
		Lenoir	4	7 10	La Grange
9	5	Person	3	4	
		Granville	3	7	
		Vance	3	5	
		Warren	3	4	
		Franklin	3	6	
10	11	Wake	12	17 20	Apex. Wendell. Fuquay-Varina. Wake Forest
11	6	Harnett	7	11	Dunn
		Johnston	10	12	Benson. Clayton. and Selma
		Lee	4	6	
12	6	Cumberland	10	17	
13	4	Bladen	4	6	
		Brunswick	4	7	
		Columbus	6	8	Tabor City
14	5	Durham	8	12	
15A	3	Alamance	7	10	Burlington
15B	3	Orange	4	9 11	Chapel Hill
		Chatham	3	6 8	Siler City
16A	2	Scotland	3	5	
		Hoke	4	5	
16B	5	Robeson	8	16	Fairmont. Maxton.

					Pembroke, Red Springs, Rowland, St. Pauls
17A	3	Caswell	2	5	
		Rockingham	4	9	Reidsville. Eden, Madison
17B	3	Stokes	2	5	
		Surry	5	8	Mt. Airy
18	10	Guilford	20	26	High Point
19A	2	Cabarrus	5	9	Kannapolis
19B	3	Montgomery	2	4	
		Randolph	5	8	Liberty
19C	2	Rowan	5	10	
20	6	Stanly	5	6	
		Union	4	6	
		Anson	4	5	
		Richmond	5	6	Hamlet
		Moore	5	8	Southern Pines
21	7	Forsyth	3	15	Kernersville
22	6	Alexander	2	3	
		Davidson	7	10	Thomasville
		Davie	2	3	
		Iredell	4	8	Mooresville
23	3	Alleghany	1	2	
		Ashe	3	4	
		Wilkes	4	6	
		Yadkin	3	5	
24	3	Avery	3	4	
		Madison	4	5	
		Mitchell	3	4	
		Watauga	4	6	
		Yancey	2	4	
25	7	Burke	4	7	
		Caldwell	4	7	
		Catawba	6	9	Hickory
26	13	Mecklenburg	15	26	
27A	5	Gaston	11	20	
27B	4	Cleveland	5	8	
		Lincoln	4	6	
28	5	Buncombe	6	15	
29	4	Henderson	4	6	

		McDowell	3	4	
		Polk	3	4	
		Rutherford	6	8	
		Transylvania	2	4	
30	3	Cherokee	3	4	
		Clay	1	2	
		Graham	2	3	
		Haywood	5	7	Canton
		Jackson	3	4	
		Macon	3	4	
		Swain	2	3."	

DIVIDE DISTRICT COURT DISTRICT 3 INTO DISTRICTS 3A AND 3B CONSISTENT WITH THE BOUNDARIES ESTABLISHED FOR SUPERIOR COURT AND PROSECUTORIAL DISTRICTS 3A AND 3B.

Sec. 12. (a) Effective September 1, 1991, G.S. 7A-133, as rewritten by Section 11 of this act, reads as rewritten:

" § 7A-133. *Numbers of judges by districts; numbers of magistrates and additional seats of court, by counties.*

Each district court district shall have the numbers of judges and each county within the district shall have the numbers of magistrates and additional seats of court, as set forth in the following table:

District	Judges	County	Magistrates Min.-Max.		Additional Seats of Court
1	3	Camden	1	2	
		Chowan	2	3	
		Currituck	1	2	
		Dare	3	8	
		Gates	2	3	
		Pasquotank	3	4	
		Perquimans	2	3	
2	3	Martin	5	8	
		Beaufort	4	8	
		Tyrrell	1	3	
		Hyde	2	4	
		Washington	3	4	
3	7	Craven	7	10	Havelock
		Pitt	10	12	Farmville, Ayden
		Pamlico	2	3	
		Carteret	5	8	

<u>3A</u>	<u>3</u>	<u>Pitt</u>	<u>10</u>	<u>12</u>	<u>Farmville</u> <u>Ayden</u> <u>Havelock</u>
<u>3B</u>	<u>4</u>	Craven	7	10	
		Pamlico	2	3	
		Carteret	5	8	
4	6	Sampson	6	8	
		Duplin	9	11	
		Jones	2	3	
		Onslow	8	14	
5	6	New Hanover	6	11	
		Pender	4	6	
6A	2	Halifax	9	14	Roanoke Rapids. Scotland Neck
6B	2	Northampton	5	6	
		Bertie	4	5	
		Hertford	5	6	
7	6	Nash	7	10	Rocky Mount
		Edgecombe	4	6	Rocky Mount
		Wilson	4	6	
8	5	Wayne	5	11	Mount Olive
		Greene	2	4	
		Lenoir	4	10	La Grange
9	5	Person	3	4	
		Granville	3	7	
		Vance	3	5	
		Warren	3	4	
		Franklin	3	6	
10	11	Wake	12	20	Apex. Wendell. Fuquay- Varina. Wake Forest
11	6	Harnett	7	11	Dunn
		Johnston	10	12	Benson. Clayton and Selma
		Lee	4	6	
12	6	Cumberland	10	17	
13	4	Bladen	4	6	
		Brunswick	4	7	
		Columbus	6	8	Tabor City
14	5	Durham	8	12	
15A	3	Alamance	7	10	Burlington

15B	3	Orange	4	11	Chapel Hill
		Chatham	3	8	Siler City
16A	2	Scotland	3	5	
		Hoke	4	5	
16B	5	Robeson	8	16	Fairmont. Maxton. Pembroke. Red Springs. Rowland. St. Pauls
17A	3	Caswell	2	5	
		Rockingham	4	9	Reidsville. Eden. Madison
17B	3	Stokes	2	5	
		Surry	5	8	Mt. Airy
18	10	Guilford	20	26	High Point
19A	2	Cabarrus	5	9	Kannapolis
19B	3	Montgomery	2	4	
		Randolph	5	8	Liberty
19C	2	Rowan	5	10	
20	6	Stanly	5	6	
		Union	4	6	
		Anson	4	5	
		Richmond	5	6	Hamlet
		Moore	5	8	Southern Pines
21	7	Forsyth	3	15	Kernersville
22	6	Alexander	2	3	
		Davidson	7	10	Thomasville
		Davie	2	3	
		Iredell	4	8	Mooresville
23	3	Alleghany	1	2	
		Ashe	3	4	
		Wilkes	4	6	
		Yadkin	3	5	
24	3	Avery	3	4	
		Madison	4	5	
		Mitchell	3	4	
		Watauga	4	6	
		Yancey	2	4	
25	7	Burke	4	7	
		Caldwell	4	7	
		Catawba	6	9	Hickory

26	13	Mecklenburg	15	26	
27A	5	Gaston	11	20	
27B	4	Cleveland	5	8	
		Lincoln	4	6	
28	5	Buncombe	6	15	
29	4	Henderson	4	6	
		McDowell	3	4	
		Polk	3	4	
		Rutherford	6	8	
		Transylvania	2	4	
30	3	Cherokee	3	4	
		Clay	1	2	
		Graham	2	3	
		Haywood	5	7	Canton
		Jackson	3	4	
		Macon	3	4	
		Swain	2	3.	

(b) Effective September 1, 1991, David Leech, E. Burt Aycock, and James E. Martin, or their successors, shall be district court judges for District Court District 3A. Effective September 1, 1991, George Wainright, James Ragan, W. Lee Lumpkin, and H. Horton Roundtree, or their successors, shall be district court judges for District Court District 3B.

(c) There is appropriated from the General Fund to the Judicial Department the sum of \$125,957 for the 1991-92 fiscal year and the sum of \$130,751 for the 1992-93 fiscal year to implement this section.

ADDITIONAL ASSISTANT DISTRICT ATTORNEYS

Sec. 13. G.S. 7A-60(a1) reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

No. of Full-Time Prosecutorial Asst. District District	Counties	Attorneys
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	6
2	Beaufort, Hyde, Martin, Tyrrell, Washington	4
3A	Pitt	5
3B	Carteret, Craven, Pamlico	5

4	Duplin, Jones, Onslow, Sampson	9
5	New Hanover, Pender	8
6A	Halifax	2
6B	Bertie, Hertford, Northampton	2
7	Edgecombe, Nash, Wilson	8 9
8	Greene, Lenoir, Wayne	8
9	Franklin, Granville, Person, Vance, Warren	7
10	Wake	16 17
11	Harnett, Johnston, Lee	7
12	Cumberland	11
13	Bladen, Brunswick, Columbus	6
14	Durham	9
15A	Alamance	4 5
15B	Orange, Chatham	4
16A	Scotland, Hoke	2
16B	Robeson	7
17A	Caswell, Rockingham	4
17B	Stokes, Surry	4
18	Guilford	15
19A	Cabarrus, Rowan	6 7
19B	Montgomery, Randolph	4
20	Anson, Moore, Richmond, Stanly, Union	9 10
21	Forsyth	11
22	Alexander, Davidson, Davie, Iredell	8 9
23	Alleghany, Ashe, Wilkes, Yadkin	4
24	Avery, Madison, Mitchell, Watauga, Yancey	3
25	Burke, Caldwell, Catawba	9 10
26	Mecklenburg	20 22
27A	Gaston	7
27B	Cleveland, Lincoln	5
28	Buncombe	6
29	Henderson, McDowell, Polk, Rutherford, Transylvania	6 7
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	6

INCLUDE MAGISTRATES' PRIOR SERVICE AS WILDLIFE OFFICERS AND CAMPUS POLICE OFFICERS IN DETERMINATION OF LONGEVITY CREDIT.

Sec. 14. (a) G.S. 7A-171.1(a) reads as rewritten:

"(a) The Administrative Officer of the Courts, after consultation with the chief district judge and pursuant to the following provisions, shall set an annual salary for each magistrate.

- (1) A full-time magistrate, so designated by the Administrative Officer of the Courts, shall be paid the annual salary indicated in the table below according to the number of years he has served as a magistrate. The salary steps shall take effect on the anniversary of the date the magistrate was originally appointed:

Table of Salaries of Full-Time Magistrates

Number of Prior Years of Service	Annual Salary	
	1989-90	1990-91
Less than 1	\$ 15,600	\$16,536
1 or more but less than 3	16,416	17,412
3 or more but less than 5	18,084	19,176
5 or more but less than 7	19,920	21,120
7 or more but less than 9	21,972	23,292
9 or more but less than 11	24,204	25,656
11 or more	26,628	28,236

A 'Full-time magistrate' is a magistrate who is assigned to work an average of not less than 40 hours a week during his term of office.

Notwithstanding any other provision of this subdivision, a full-time magistrate, who was serving as a magistrate on December 31, 1978, and who was receiving an annual salary in excess of that which would ordinarily be allowed under the provisions of this subdivision, shall not have the salary, which he was receiving reduced during any subsequent term as a full-time magistrate. That magistrate's salary shall be fixed at the salary level from the table above which is nearest and higher than the latest annual salary he was receiving on December 31, 1978, and, thereafter, shall advance in accordance with the schedule in the table above.

- (2) A part-time magistrate, so designated by the Administrative Officer of the Courts, is included, in accordance with G.S. 7A-170, under the provisions of G.S. 135-1(10) and 135-40.2(a) and shall receive an annual salary based on the

following formula: The average number of hours a week that a part-time magistrate is assigned work during his term shall be multiplied by the annual salary payable to a full-time magistrate who has the same number of years of service prior to the beginning of that term as does the part-time magistrate and the product of that multiplication shall be divided by the number 40. The quotient shall be the annual salary payable to that part-time magistrate.

A 'part-time magistrate' is a magistrate who is assigned to work an average of less than 40 hours of work a week during his term. No magistrate may be assigned an average of less than 10 hours of work a week during his term.

Notwithstanding any other provision of this subdivision, upon reappointment as a magistrate and being assigned to work the same or greater number of hours as he worked as a magistrate for a term of office ending on December 31, 1978, a person who received an annual salary in excess of that to which he would be entitled under the formula contained in this subdivision shall receive an annual salary equal to that received during the prior term. That magistrate's salary shall increase in accordance with the salary formula contained in this subdivision.

- (3) Notwithstanding any other provision of this section, a magistrate with a two-year Associate in Applied Science degree in criminal justice or paralegal training from a North Carolina community college or the equivalent degree from a private educational institution in North Carolina, shall receive the annual salary provided in the table above for a magistrate with three years of service in addition to those which the magistrate has served; a magistrate with a four-year degree from an accredited senior institution of higher education shall receive the annual salary provided in the table above for a magistrate with five years of service in addition to those which the magistrate has served; a magistrate who holds a law degree from an accredited law school shall receive the annual salary provided in the table above for a magistrate with seven years of service in addition to those which the magistrate has served; and a magistrate who is licensed to practice law in North Carolina shall receive the annual salary provided in the table above for a magistrate with nine years of service in addition to those which the magistrate has served.

Magistrates with a two or four-year degree or a law degree described herein who became magistrates before July

- 1, 1979 are entitled to an increase of three, five and seven years, respectively, in their seniority, for pay purposes only. Full-time magistrates licensed to practice law in North Carolina who became magistrates before July 1, 1979 are entitled to the pay of a magistrate with 9 or more years of service, and part-time magistrates holding a law degree or a license to practice law as described above who became magistrates before July 1, 1979 are entitled to a proportionate adjustment in their pay. Pay increases authorized by this paragraph of this subdivision are not retroactive.
- (4) Notwithstanding any other provision of this section, a magistrate with 10 years' experience within the last 12 years as a sheriff or deputy sheriff, administrative officer for a district attorney, city or county police officer, campus police officer, wildlife officer, or highway patrolman in the State of North Carolina, or with 10 years' experience within the last 12 years as clerk of superior court or an assistant or deputy clerk of court in the State of North Carolina shall receive the annual salary provided in the table in subdivision (1) for a magistrate with five years of service in addition to those the magistrate has served. A magistrate who qualifies for the increased salary under both subdivisions (3) and (4) of this subsection shall receive either the salary determined under subdivision (3) or that determined under subdivision (4), whichever is higher, but no more.
- (5) The Administrative Officer of the Courts shall provide magistrates with longevity pay at the same rates as are provided by the State to its employees subject to the State Personnel Act."

(b) This section applies to all persons serving as magistrates on July 1, 1991, or appointed to serve on and after that date.

ADJUST FEES IN THE GENERAL COURT OF JUSTICE

Sec. 15. (a) G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or *nolo contendere*, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

- (1) For each arrest or personal service of criminal process, including citations and subpoenas, the sum of five dollars (\$5.00), to be remitted to the county wherein the arrest was

- made or process was served, except that in those cases in which the arrest was made or process served by a law-enforcement officer employed by a municipality, the fee shall be paid to the municipality employing the officer.
- (2) For the use of the courtroom and related judicial facilities, the sum of five dollars (\$5.00) in the district court, including cases before a magistrate, and the sum of twenty-three dollars (\$23.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public defenders, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county.
- (3) For the retirement and insurance benefits of both State and local government law-enforcement officers, the sum of seven dollars and twenty-five cents (\$7.25), to be remitted to the State Treasurer. Fifty cents (50¢) of this sum shall be administered as is provided in Article 12C of Chapter 143 of the General Statutes. Five dollars and seventy-five cents (\$5.75) of this sum shall be administered as is provided in Article 12E of Chapter 143 of the General Statutes, with one dollar and twenty-five cents (\$1.25) being administered in accordance with the provisions of G.S. 143-166.50(e). One dollar (\$1.00) of this sum shall

be administered as is provided in Article 12F of Chapter 143 of the General Statutes.

- (3a) For the supplemental pension benefits of sheriffs, the sum of seventy-five cents (75¢), to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes.
- (4) For support of the General Court of Justice, the sum of ~~thirty-three dollars (\$33.00)~~ thirty-seven dollars (\$37.00) in the district court, including cases before a magistrate, and the sum of ~~forty dollars (\$40.00)~~ forty-four dollars (\$44.00) in the superior court, to be remitted to the State Treasurer."

(b) G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court the following costs shall be assessed:

- (1) For the use of the courtroom and related judicial facilities, the sum of five dollars (\$5.00) in cases heard before a magistrate, and the sum of nine dollars (\$9.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.
- (2) For support of the General Court of Justice, the sum of ~~forty-seven dollars (\$47.00)~~ fifty-one dollars (\$51.00) in the superior court, and the sum of ~~thirty-two dollars (\$32.00)~~ thirty-six dollars (\$36.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~twenty dollars (\$20.00)~~ twenty-four dollars (\$24.00). Sums collected under this subsection shall be remitted to the State Treasurer."

(c) This section shall apply to all cases pending on or commenced on or after July 1, 1991.

CHANGE THE METHOD FOR FILLING DISTRICT COURT VACANCIES

Sec. 16. G.S. 7A-142 reads as rewritten:

" § 7A-142. *Vacancies in office.*

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19.

If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations."

EFFECTIVE DATE

Sec. 17. Except where otherwise provided, this act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 141

CHAPTER 743

AN ACT TO PROVIDE FOR FAMILY PRESERVATION SERVICES, TO ESTABLISH THE ADVISORY COMMITTEE ON FAMILY-CENTERED SERVICES, AND TO APPROPRIATE FUNDS FOR THE ADVISORY COMMITTEE ON FAMILY-CENTERED SERVICES.

Whereas the General Assembly finds that State efforts to strengthen families and keep them together while promoting the protection and well-being of children are important for North Carolina; and

Whereas, the General Assembly establishes that "family preservation" programs are those that provide home-based crisis intervention services as an alternative to out-of-home placement of children; and

Whereas, the General Assembly recognizes that family preservation programs operating in the State's mental health, social services, and juvenile justice systems are providing short-term,

intensive, home-based services that are showing dramatic results in keeping children together with their families and in preventing unnecessary out-of-home placements; and

Whereas, the General Assembly finds that family preservation programs currently offered should be expanded, strengthened, and made more efficient through inter-agency coordination of these programs; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 5A. Family Preservation Act.

"§ 143B-150.5. Family Preservation Services Program established; purpose.

(a) There is established the Family Preservation Services Program of the Department of Human Resources. The Program shall be phased in over a four-year period, commencing with fiscal year 1991-92. By the end of the four-year phase-in period, and to the extent that funds are made available, locally-based family preservation services shall be available to all 100 counties. The Secretary of the Department of Human Resources shall be responsible for the development and implementation of the Family Preservation Services Program as established in this act. In developing the Program the Secretary shall consider the advice and recommendations of the Advisory Committee on Family-Centered Services.

(b) The purpose of the Family Preservation Services Program is, where feasible and in the best interests of the child and the family, to keep the family unit intact by providing intensive family-centered services that help create, within the family, positive, long-term changes in the home environment.

(c) Family preservation services shall be financed in part through grants to local agencies for the development and implementation of locally-based family preservation services. Grants to local agencies shall be made in accordance with the provisions of G.S. 143B-150.6.

(d) The Secretary of the Department of Human Resources shall ensure the cooperation of the Division of Social Services, the Division of Youth Services, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Division of Medical Assistance, in carrying out the provisions of this act.

"§ 143B-150.6. Program services; eligibility; grants for local projects; fund transfers.

(a) Services: Services to be provided under the Family Preservation Services Program shall include but are not limited to: family assessment, intensive family and individual counseling, client

advocacy, case management, development and enhancement of parenting skills, and referral for other services as appropriate.

(b) Eligibility: Families eligible for services under the Family Preservation Services Program are those with children ages 0-17 years who are at risk of imminent separation through placement in public welfare, mental health, or juvenile justice systems.

(c) Service Delivery: Services delivered to eligible families under the Family Preservation Services Program shall be provided in accordance with the following requirements:

- (1) Each eligible family shall receive intensive family preservation services, beginning with identification of an imminent risk of out-of-home placement, for an average of four weeks but not more than six weeks;
- (2) At least one-half of a caseworker's time spent providing family preservation services to each eligible family shall be provided in the family's home and community;
- (3) Family preservation caseworkers shall be available to each eligible family by telephone and on call for visits 24 hours a day, seven days a week.
- (4) Each family preservation caseworker shall provide services to a maximum of four families at any given time.

(d) Grants for local projects: The Secretary of the Department of Human Resources shall award grants to local agencies for the development and implementation of locally-based family preservation services projects. In awarding the grants, the Secretary shall consider the recommendations of the Advisory Committee on Family-Centered Services. The number of grants awarded and the level of funding of each grant for each fiscal year shall be contingent upon and determined by funds appropriated for that purpose by the General Assembly and shall be in accordance with the phase-in period of the Family Preservation Services Program. During the phase-in period, and to the extent funds are appropriated, grants shall be awarded by the Secretary on a competitive basis to local agencies who submit proposals for such funding, which proposals meet grant award criteria established by the Advisory Committee on Family-Centered Services.

(e) Inter-agency fund transfers: The Department may allow the Division of Social Services, the Division of Youth Services, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, to use funds available to each Division to support family preservation services provided by the Division under the Program; provided that such use does not violate federal regulations pertaining to, or otherwise jeopardize the availability of federal funds.

"§ 143B-150.7. Advisory Committee on Family-Centered Services; establishment, membership, compensation.

(a) There is established the Advisory Committee on Family-Centered Services within the Department of Human Resources.

(b) The Committee shall have 24 members appointed for staggered four-year terms and until their successors are appointed and qualify. The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term. Six of the members shall be legislators appointed by the General Assembly, three of whom shall be recommended by the Speaker of the House of Representatives, and three of whom shall be recommended by the President Pro Tempore of the Senate. Two of the members shall be appointed by the General Assembly from the public at large, one of whom shall be recommended by the Speaker of the House of Representatives, and one of whom shall be recommended by the President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

- (1) Four members representing the Department of Human Resources, one of whom shall be the Assistant Secretary for Children and Family, one of whom shall represent the Division of Social Services, one of whom shall represent the Division of Youth Services, and one of whom shall represent the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services;
- (2) Three members, one from each of the following: the Administrative Office of the Courts, the Department of Public Instruction, and the Division of Maternal and Child Health of the Department of Environment, Health, and Natural Resources;
- (3) One member who represents the Juvenile Justice Planning Committee of the Governor's Crime Commission, and one member appointed at large;
- (4) One member who is a district court judge certified by the Administrative Office of the Courts to hear juvenile cases;
- (5) One member representing the schools of social work of The University of North Carolina;
- (6) Two members, one of whom is a provider of family preservation services, and one of whom is a consumer of family preservation services; and
- (7) Three members who represent county-level associations; one of whom represents the Association of County Commissioners, one of whom represents the Association of Directors of Social Services, and one of whom represents the

North Carolina Council of Mental Health, Developmental Disabilities, and Substance Abuse Services.

The Secretary of the Department of Human Resources shall serve as the Chairman of the Committee. The Secretary shall appoint the cochair of the Committee for a two-year term on a rotating basis from among the Committee members who represent the Division of Youth Services, the Division of Social Services, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

(c) To the extent that funds are made available, members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(d) A majority of the Committee shall constitute a quorum for the transaction of its business.

(e) The Committee may use funds allocated to it to employ an administrative staff person to assist the Committee in carrying out its duties. Clerical and other support staff services needed by the Committee shall be provided by the Secretary of Human Resources.

"§ 143B-150.8. Advisory Committee on Family-Centered Services; responsibilities.

(a) The Advisory Committee on Family-Centered Services shall have the following responsibilities:

- (1) Provide guidance and advice to the Secretary in the development of a plan for the statewide implementation of an inter-agency family preservation services program whereby family-centered preservation services are available to all counties by July 1, 1995, through the coordinated efforts of the Division of Social Services, Division of Youth Services, and Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
- (2) Recommend standards for:
 - a. Oversight and development of family-centered preservation services;
 - b. Development and maintenance of inter-agency training and technical assistance in the provision of family-centered services;
 - c. Professional staff qualifications, program monitoring, and data collection;
 - d. Statewide evaluation of locally-based family preservation programs;
 - e. Coordination of funding sources for family preservation programs;
 - f. Procedures for awarding grants to local agencies providing family-centered services; and

- g. Annual reports to the Governor and the General Assembly on the services provided and achievements of the Family Preservation Services Program.
 - (3) The Committee shall submit a written report not later than May 1, 1992, and not later than October 1 of each year thereafter, to the Governor, to the Joint Legislative Commission on Governmental Operations, and to the Commission on the Family. The report shall address the progress in implementation of the Family Preservation Services Program. The report shall include an accounting of funds expended and anticipated funding needs for full implementation of the program. The report shall also include the following information for each county participating in the Program and for the Program as a whole:
 - a. The number of families receiving service through the Program;
 - b. The number of children at risk of placement prior to initiation of service in families receiving Program services;
 - c. Among those children in sub-subdivision b., the number of children placed in foster care, in group homes, and in other facilities outside their homes and families;
 - d. The average cost of the service provided to families under the Program;
 - e. The estimated cost of out-of-home placement, through foster care, group homes, or other facilities, which would otherwise have been expended on behalf of children at risk of placement who successfully remain united with their families as a result of services provided through the Program. Cost estimates should be based on average length of stay and average cost of such out-of-home placements;
 - f. The number of children who remain unified with their families for one, two, and three years after receiving services under the Program; and
 - g. An overall statement of the progress of the Program and local projects during the preceding year, along with recommendations for improvements.
 - (b) The Committee may use funds allocated to it to contract for services to monitor local projects and for an independent evaluation of the Family Preservation Services Program.
- " § 143B-150.9. State agency cooperation with Advisory Committee on Family-Centered Services.

All appropriate State agencies, including the Department of Human Resources, the Department of Environment, Health, and Natural Resources, the Department of Public Instruction, the Administrative Office of the Courts, the Governor's Crime Commission, and other public family preservation service providers shall cooperate with the Advisory Committee on Family-Centered Services in carrying out its responsibilities."

Sec. 2. Section 1 of this act becomes effective October 1, 1991, if and only if specific funds are appropriated for the implementation of the Committee established in Section 1 of this act. Funds appropriated for the 1991-92 fiscal year or for any fiscal year in the future do not constitute an entitlement to services beyond those provided for that fiscal year. Nothing in this act creates any rights except to the extent that funds are appropriated by the State to implement its provisions from year to year and nothing in this act obligates the General Assembly or any County Government to appropriate funds to implements its provisions.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 392

CHAPTER 744

AN ACT TO CLARIFY THAT THE TIME PERIOD FOR RENOUNCING A FUTURE INTEREST UNDER G.S. 31B-2 MAY DIFFER FROM THE TIME PERIOD FOR A QUALIFIED DISCLAIMER FOR FEDERAL ESTATE TAX PURPOSES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Whereas, the time for renouncing a present interest under the first sentence of G.S. 31B-2(a) is the same as the time for disclaiming a present interest for federal estate tax purposes, and G.S. 31B-2(a) expressly so states; and

Whereas, the time for renouncing a future interest under G.S. 31B-2(b) presently differs from the time for disclaiming a future interest for federal estate tax purposes; and

Whereas, a person reading G.S. 31B-2 could erroneously assume that the time for disclaiming a future interest for federal estate tax purposes is the same as the time under G.S. 31B-2(b); Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 31B-2(a) and (b) read as rewritten:

"(a) An instrument renouncing a present interest shall be filed within the time period required under the applicable federal statute for a renunciation to be given effect as a disclaimer for federal estate tax purposes. If there is no such federal statute the instrument shall be filed not later than nine months after the death of the decedent or donee of the power.

(b) An instrument renouncing a future interest shall be filed not later than six months after the event by which the taker of the property or interest is finally ascertained and his interest indefeasibly vested and he is entitled to possession even though such renunciation may not be recognized as a disclaimer for federal estate tax purposes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 438

CHAPTER 745

AN ACT TO ALLOW THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO PROTECT CERTAIN CONFIDENTIAL INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 104E of the General Statutes is amended by adding a new section to read:

" § 104E-29. Confidential information protected.

(a) The following information received or prepared by the Department in the course of carrying out its duties and responsibilities under this Chapter is confidential information and shall not be subject to disclosure under G.S. 132-6:

- (1) Information which the Secretary determines is entitled to confidential treatment pursuant to G.S. 132-1.2. If the Secretary determines that information received by the Department is not entitled to confidential treatment, the Secretary shall inform the person who provided the information of that determination at the time such determination is made. The Secretary may refuse to accept or may return any information that is claimed to be confidential that the Secretary determines is not entitled to confidential treatment.
- (2) Information that is confidential under any provision of federal or state law.
- (3) Information compiled in anticipation of enforcement or criminal proceedings, but only to the extent disclosure could

reasonably be expected to interfere with the institution of such proceedings.

(b) Confidential information may be disclosed to officers, employees, or authorized representatives of federal or state agencies if such disclosure is necessary to carry out a proper function of the Department or the requesting agency or when relevant in any proceeding under this Chapter.

(c) Except as provided in subsection (b) of this section or as otherwise provided by law, any officer or employee of the State who knowingly discloses information designated as confidential under this section shall be guilty of a misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than two years or both and shall be removed from office or discharged from employment."

Sec. 2. G.S. 130A-304 reads as rewritten:

" § 130A-304. ~~Information received pursuant to this Article.~~ Confidential information protected.

(a) ~~For the purposes of this Article, upon a showing satisfactory to the Department by a person that all or any part of records, reports or information to which the Department has access under G.S. 130A-17, would divulge information entitled to protection under subsection (b), the Department shall consider the information confidential in accordance with the purposes of that subsection, except that the record, report or information may be disclosed to other officers, employees or authorized representatives of the Department concerned with carrying out this Article or when relevant in any proceeding under this Article. The following information received or prepared by the Department in the course of carrying out its duties and responsibilities under this Article is confidential information and shall not be subject to disclosure under G.S. 132-6:~~

- (1) Information which the Secretary determines is entitled to confidential treatment pursuant to G.S. 132-1.2. If the Secretary determines that information received by the Department is not entitled to confidential treatment, the Secretary shall inform the person who provided the information of that determination at the time such determination is made. The Secretary may refuse to accept or may return any information that is claimed to be confidential that the Secretary determines is not entitled to confidential treatment.
- (2) Information that is confidential under any provision of federal or state law.
- (3) Information compiled in anticipation of enforcement or criminal proceedings, but only to the extent disclosure could

reasonably be expected to interfere with the institution of such proceedings.

(b) Confidential information may be disclosed to officers, employees, or authorized representatives of federal or state agencies if such disclosure is necessary to carry out a proper function of the Department or the requesting agency or when relevant in any proceeding under this Article. For the purposes of this Article, if an officer or employee of the Department publishes, divulges, discloses or makes known in any manner or to any extent not authorized by law any information revealed in the course of employment or official duties or by reason of examination or investigation made by, or return, report or record made to or filed with the Department which information concerns or relates to the trade secrets, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy or any book containing any abstract or its particulars to be seen or examined by any person except as provided in subsection (a) shall be guilty of a misdemeanor and fined not more than five hundred dollars (\$500.00) or imprisoned not more than two years or both; and shall be removed from office or employment.

(c) Except as provided in subsection (b) of this section or as otherwise provided by law, any officer or employee of the State who knowingly discloses information designated as confidential under this section shall be guilty of a misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than two years or both and shall be removed from office or discharged from employment."

Sec. 3. G.S. 132-1.2 reads as rewritten:

"§ 132-1.2. ~~Trade secrets.~~ *Confidential information.*

Nothing in this Article shall be construed to require or authorize a public agency to disclose any information which:

- (1) Constitutes a 'trade secret' as defined in G.S. 66-152(3);
- (2) Is the property of a private 'person' as defined in G.S. 66-152(2);
- (3) Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, ~~or~~ industrial development ~~project~~, project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State; and
- (4) Is designated or indicated as 'confidential' ~~and/or~~ or as a 'trade secret' at the time of its initial disclosure to the public agency."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

H.B. 1309

CHAPTER 746

AN ACT TO IMPROVE ELECTION ADMINISTRATION BY ALLOWING CHANGES IN SUPERIOR COURT JUDICIAL DISTRICT BOUNDARIES TO REFLECT CHANGES IN PRECINCT BOUNDARIES SINCE ENACTMENT OF THE PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-41(c) reads as rewritten:

"(c) In subsection (b) above:

- (1) The names and boundaries of townships are as they were legally defined and in effect as of January 1, 1980, and recognized in the 1980 U.S. Census;
- (2) For Guilford County, precinct boundaries are as shown on maps in use by the Guilford County Board of Elections on April 15, 1987;
- (3) For Mecklenburg, Wake, and Durham Counties, precinct boundaries are as shown on the current maps in use by the appropriate county board of elections as of January 31, 1984, in accordance with G.S. 163-128(b);
- (4) For Wilson County, commissioner districts are those in use for election of members of the county board of commissioners as of January 1, 1987;
- (5) For Cumberland County, House District 17 is in accordance with the boundaries in effect on January 1, 1987. Precincts are in accordance with those as approved by the United States Department of Justice on February 28, 1986; and
- (6) For Forsyth County, the boundaries of wards and precincts are those in effect on 'WARD MAP 1985', published November 1985 by the City of Winston-Salem and Forsyth County.

If any changes in precinct boundaries, wards, commissioner districts, or House of Representative districts have been made since the dates specified, or are made, those changes shall not change the boundaries of the superior court districts; provided that if any of those boundaries have changed, a precinct is divided by a superior court judicial district boundary, and the precinct was not so divided at the time of enactment of this section in 1987, the boundaries of the superior court judicial district are changed to place the entirety of the

precinct in the superior court judicial district where the majority of the residents of the precinct reside, according to the 1990 Federal Census if:

- (1) Such change does not result in placing a superior court judge in another superior court district;
- (2) Such change does not make a district that has an effective racial minority electorate not have an effective racial minority electorate; and
- (3) The change is approved by the the county board of elections where the precinct is located, State Board of Elections and by the Secretary of State upon finding that the change:
 - a. Will improve election administration; and
 - b. Complies with subdivisions (1) and (2) of this subsection."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 395

CHAPTER 747

AN ACT TO PROVIDE FOR THE TERMINATION OF INEFFICIENT SMALL TRUSTS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND TO PERMIT REFORMATION OF CERTAIN CHARITABLE TRUSTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 36A of the General Statutes is hereby amended by inserting the following new Article:

"ARTICLE 11.

"Termination of Small Trusts.

" § 36A-125. Termination of small trusts.

(a) If at any time the trustee of a noncharitable irrevocable trust determines in good faith that the value of the assets held in trust is ten thousand dollars (\$10,000) or less, and the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust, the trustee, without approval of the court, may, but is not required to, terminate the trust and distribute the trust property, including principal and undistributed income, to the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor as determined by the trustee from the trust agreement; provided, however, that the trust property, including principal and undistributed income, shall be distributed to the income beneficiary of the trust if the trust otherwise qualifies for the marital deduction for

federal estate tax or North Carolina inheritance tax purposes, or is a Qualified Subchapter S Trust as defined in the Internal Revenue Code. The trustee may enter into an agreement or make such other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust.

(b) Any trust property becoming distributable under subsection (a) of this section to a minor or incompetent beneficiary may be distributed:

- (1) To the guardian of the estate or general guardian of such beneficiary; or
- (2) In accordance with the North Carolina Uniform Transfers to Minors Act, Chapter 33A of the General Statutes.

The trustee shall be under no duty to see to the application of the payment if the trustee exercised due care in the selection of the person to whom such payment was made. The receipt of such person shall be full acquittance to the trustee to the extent of such payment.

(c) The trustee shall not be liable for such termination and distribution, notwithstanding the existence or potential existence of other beneficiaries who are not *in esse* or not determined until the happening of a future event. Any beneficiary receiving a distribution from a trust terminated under this section shall incur no liability and shall not be required to account to anyone for such distribution.

(d) The provisions of this section shall not apply where the instrument creating the trust, by specific reference to this section, provides that it shall not apply.

(e) This section applies to trusts created prior to the effective date of this act unless the trust agreement contains spendthrift or similar protective provisions, including provisions described in G.S. 36A-115(b)(3). This section also applies to trusts created on or after the effective date of this act notwithstanding the existence of spendthrift or similar protective provisions, including provisions described in G.S. 36A-115(b)(3), in the trust agreement."

Sec. 2. In the event that the 1991 General Assembly enacts the "North Carolina Uniform Custodial Trust Act", G.S. 36A-125(b), as enacted by this act, is rewritten to read:

"(b) Any trust property becoming distributable under subsection (a) of this section to a minor or incompetent beneficiary may be distributed:

- (1) To the guardian of the estate or general guardian of such beneficiary;
- (2) In accordance with the North Carolina Uniform Transfers to Minors Act, Chapter 33A of the General Statutes; or

- (3) In accordance with the North Carolina Uniform Custodial Trust Act, Chapter 33B of the General Statutes.

The trustee shall be under no duty to see to the application of the payment if the trustee exercised due care in the selection of the person to whom such payment was made. The receipt of such person shall be full acquittance to the trustee to the extent of such payment."

Sec. 3. G.S. 36A-53(b) is rewritten to read:

~~"(b) In the case of a will executed before December 31, 1978, or a trust created before such date, if~~ If a federal estate tax deduction is not allowable at the time of a decedent's death because of the failure of an interest in property which passes from the decedent under a will or trust to a person, or for a use, described in section 2055(a) of the Internal Revenue Code of 1954, to meet the requirements of subsections 2055(e)(2)(A) or (B) of the Internal Revenue Code of 1954, 1986, then in order that such deduction shall nevertheless be allowable under section 2055(e)(3) of the Internal Revenue Code of 1954, 1986, any judge of the superior court may, on application of any trustee, executor, administrator or any interested party and either (i) with the written consent of the charitable beneficiaries, the noncharitable beneficiaries not under any legal disability, and duly appointed guardians or guardians ad litem acting on behalf of any beneficiaries under legal disability, or (ii) upon a finding that the interest of such beneficiaries is substantially preserved, order an amendment to the trust so that the remainder interest is in a trust which is a charitable remainder annuity trust, a charitable remainder unitrust (as those terms are described in section 664 of the Internal Revenue Code of 1954, 1986) or a pooled income fund (as that term is described in section 642(c)(5) of the Internal Revenue Code of 1954, 1986), or so that any other interest of a charitable beneficiary is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly), in accordance with the provisions of section 2055(e)(2)(B) of the Internal Revenue Code of 1954, 1986. In every such proceeding, the Attorney General, as representative of the public interest, shall be notified, and given an opportunity to be heard."

Sec. 4. Sections 1 and 2 of this act become effective October 1, 1991. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

Whereas, despite the decrease in the number of hunting accidents resulting in death or bodily injury, there is increased public concern over the safe handling of firearms by persons engaged in the hunting of wild animals and wild birds; and

Whereas, numerous members of the general public have requested increased assurance that hunters are acting responsibly in the handling of firearms; and

Whereas, the vast majority of licensed hunters in North Carolina wish to encourage safe handling of firearms among the hunting public, and to police the hunting public in order to remove the negative impact of the small number of careless hunters; and

Whereas, the hunting public has expressed its recognition of the hunter's obligation to exercise reasonable care in the discharge of a firearm; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 21B.

"Criminally Negligent Hunting.

" § 113-290. Unlawful use of firearms.

It is unlawful for any person, while hunting or taking wild animals or wild birds as those terms are defined in G.S. 113-129 and G.S. 113-130, to discharge a firearm:

- (1) Carelessly and heedlessly in wanton disregard for the safety of others; or
- (2) Without due caution or circumspection, and in a manner so as to endanger any person or property;

and resulting in property damage or bodily injury.

" § 113-290.1. Penalties.

(a) A person who violates the provisions of this Article is guilty of a misdemeanor punishable as follows:

- (1) If property damage only results from the unlawful activity, a fine of not less than two hundred fifty dollars (\$250.00) nor more than one thousand dollars (\$1,000), or imprisonment not to exceed 60 days, or both, in the discretion of the court, and the court shall order the payment of restitution to the property owner;
- (2) If bodily injury not leading to the disfigurement or total or partial permanent disability of another person results from the unlawful activity, a fine of not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000), or imprisonment not to exceed two years, or both, in the discretion of the court; if property damage also results

from the unlawful activity, the court shall order the payment of restitution to the property owner;

- (3) If bodily injury leading to the disfigurement or total or partial permanent disability of another person results from the unlawful activity, a fine of not less than seven hundred fifty dollars (\$750.00) nor more than two thousand dollars (\$2,000), and imprisonment for not less than 15 days nor more than two years; if property damage also results from the unlawful activity, the court shall order the payment of restitution to the property owner;
- (4) If death results from the unlawful activity, a fine of not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000), and imprisonment for not less than 30 days nor more than two years; if property damage also results from the unlawful activity, the court shall order the payment of restitution to the property owner.

(b) The fact that a person was impaired at the time of a violation of this Article shall be an aggravating factor and the court shall impose an additional fine and/or imprisonment in accordance with (a)(2) above in cases not resulting in bodily injury and in accordance with (a)(4) above in cases resulting in bodily injury. For purposes of this section, 'impaired' means being under the influence of an impairing substance, or having consumed sufficient alcohol so that the person has, at any relevant time after the offense, an alcohol concentration of .10 or above.

(c) In addition to the penalties provided in (a), upon conviction of a violation of this Article, the Wildlife Resources Commission shall suspend all hunting privileges of:

- (1) A person convicted under (a)(1) for one year;
- (2) A person convicted under (a)(2) for three years; and
- (3) A person convicted under (a)(3) or (a)(4) for five years.

(d) A person convicted of hunting or taking wild animals or wild birds while his hunting license is suspended under this section shall be fined not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000), or imprisoned not to exceed two years, or both, and shall have all hunting privileges suspended for an additional five years. The person shall not be issued another hunting license until he has satisfactorily completed the hunter safety course established in G.S. 113-270.1A.

(e) This Article shall be enforced by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

(f) A violation of this Article resulting in the death of another person constitutes a separate and distinct offense from, and is not a lesser included offense of, the crime of involuntary manslaughter."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 649

CHAPTER 749

AN ACT TO CREATE THE NORTH CAROLINA AIR CARGO AIRPORT AUTHORITY, TO AUTHORIZE THE ISSUANCE OF REVENUE BONDS TO FINANCE AIRPORT AND INDUSTRIAL FACILITIES, TO AUTHORIZE UNITS OF LOCAL GOVERNMENT TO TAKE CERTAIN ACTIONS RELATED TO CARGO AIRPORT COMPLEXES, AND TO MAKE CONFORMING CHANGES TO OTHER STATUTES.

The General Assembly of North Carolina enacts:

Section 1. A new Chapter is added to the General Statutes to read:

"Chapter 63A.

"North Carolina Air Cargo Airport Authority.

" § 63A-1. Short title and intent.

This Chapter is the 'North Carolina Air Cargo Airport Authority Act.' It is enacted in part pursuant to Article V, Section 13, of the North Carolina Constitution with the intent that the body politic and corporate created by this Chapter shall have all power and authority as may be provided to it under that section of the Constitution.

" § 63A-2. Definitions.

The following definitions apply in this Chapter:

- (1) Aircraft. -- A contrivance that is used or designed for flight.
- (2) Airport project. -- Any of the following that is part of or is used in connection with a cargo airport or a facility at a cargo airport complex site and is not a special user project:
 - a. Land, equipment, or buildings or other structures, whether located on one or more sites.
 - b. The addition to or the rehabilitation, improvement, renovation, or enlargement of any property described in subpart a.

The term includes infrastructure improvements, such as improvements to railroad facilities, roads, bridges, and water, sewer, or electric utilities even if not located on a

- cargo airport complex site. An airport project may include a facility leased to one or more entities under a true lease.
- (3) Authority. -- The North Carolina Air Cargo Airport Authority.
- (4) Board. -- The Board of Directors of the Authority.
- (5) Bonds. -- The revenue bonds or other interest bearing obligations authorized to be issued by the Authority under this Chapter.
- (6) Cargo airport. -- Any area of land or water that is designed for the landing and takeoff of aircraft, any appurtenant area used or suitable for airport buildings or other airport facilities, and any appurtenant right-of-way. In addition to facilities for the transportation of cargo by aircraft, a cargo airport may contain facilities to shelter, service, or repair aircraft and facilities to discharge and receive passengers.
- (7) Cargo airport complex. -- A cargo airport and all other facilities, including private facilities, related to the cargo airport that are located within the cargo airport complex site.
- (8) Cargo airport complex site. -- The area designated by the Authority as the location of a cargo airport complex. An area may not be so designated by the Authority unless all or a substantial portion of the land on which the cargo airport is located or is to be located is or shall be owned by the Authority.
- (9) Costs. -- The capital cost of a project, including:
- a. The costs of doing any or all of the following:
 1. Acquiring, constructing, erecting, providing, developing, installing, furnishing, and equipping.
 2. Reconstructing, remodeling, altering, renovating, replacing, refurbishing, and reequipping.
 3. Enlarging, expanding, and extending.
 4. Demolishing, relocating, improving, grading, draining, landscaping, paving, widening, and resurfacing.
 - b. The costs of all property, both real and personal and both improved and unimproved, and of plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water rights, air rights, franchises, and licenses used or useful in connection with the project.
 - c. The costs of demolishing or moving structures from land acquired and acquiring land to which the structures are to be moved.

- d. Financing charges, including estimated interest during the acquisition or construction of a project and for one year thereafter.
 - e. The costs of services to provide plans, specifications, studies, reports, surveys, and estimates of costs and revenues.
 - f. The costs of paying any interim financing, including principal, interest and premium, related to the acquisition or construction of the project.
 - g. Administrative and legal expenses and administrative charges.
 - h. The costs of obtaining bond and reserve fund insurance and investment contracts, of credit-enhancement facilities, liquidity facilities, and interest-rate agreements, and of establishing and maintaining debt service and other reserves.
 - i. Any other services, costs, and expenses necessary or incidental to the project.
- (10) Credit facility. -- An agreement with a banking institution, an insurance institution, an investment institution, or other financial institution located inside or outside the United States of America that provides for prompt payment, whether at maturity, presentment, or tender for purchase, redemption, or acceleration, of part or all of the principal or purchase price, redemption premium, if any, and interest on a bond or note issued by the Authority and for repayment of the institution.
- (11) Financing agreement. -- A written instrument establishing the rights and responsibilities of the Authority and the operator concerning a special user project financed by the issuance of bonds. A financing agreement may be a lease, a lease and lease-back, a sale and lease-back, a lease purchase, an installment sale and purchase agreement, a conditional sales agreement, a secured or unsecured loan agreement, or other similar contract, and may involve property in addition to the property financed with the bonds.
- (12) Local Government Commission. -- The Local Government Commission of the Department of State Treasurer, established by Article 2 of Chapter 159 of the General Statutes.
- (13) Notes. -- Revenue notes or revenue bond anticipation notes issued by the Authority under this Chapter.

- (14) Obligor. -- A person, including an operator, who has entered into a financing or other agreement obligating the person to make payments to the Authority or to holders of bonds issued to finance a special user project.
- (15) Operator. -- The person entitled to the use or occupancy of a special user project.
- (16) Par formula. -- A provision or formula to make periodic adjustments in the interest rate of a bond or note, including:
 - a. A provision for an adjustment to keep the purchase price of the bond or note in the open market as close to par as possible.
 - b. A provision for an adjustment based on one or more percentages of a prime rate or base rate that may vary or apply for specified periods of time.
 - c. Any other provision that does not materially and adversely affect the financial position of the Authority and the marketing of the bonds or notes at a reasonable interest cost to the Authority.
- (17) Person. -- Any person, corporation, partnership, association, trust, or other legal entity.
- (18) Project. -- An airport project or a special user project.
- (19) Revenues. -- For a special user project, the term means rents, fees, charges, payments, proceeds, or other income or profit derived from the special user project or from the financing agreement or security document for the special user project. For an airport project, the term means rents, fees, charges, payments, proceeds, or other income or profit derived from the airport project or from any pledge of nontax revenues, appropriation, or payment made by the State or a county in which the cargo airport is located.
- (20) Security document. -- One or more written instruments establishing the rights and responsibilities of the Authority and the holders of bonds issued to finance a special user project. A security document may provide for, or be in the form of an agreement with, a trustee for the benefit of the bondholders. A security document may contain an assignment, pledge, mortgage, or other encumbrance of part or all of the Authority's interest in, or right to receive revenues from, a special user project or any other property provided by the operator or other obligor under a financing agreement. A financing agreement and a security document may be combined as one instrument.

(21) Special user project. -- Any land, equipment, or buildings or other structures located on one or more sites within a cargo airport complex site and the addition to or the rehabilitation, improvement, renovation, or enlargement of a structure located within a cargo airport complex site when the property is to be used as or in connection with any of the following:

- a. An undertaking for industry, including an industrial or a manufacturing factory, mill, assembly plant, or fabricating plant, a freight terminal, an industrial research, development, or laboratory facility, or an industrial processing or distribution facility for industrial or manufactured products.
- b. A commercial, processing, mining, transportation, distribution, storage, marine, aviation, or environmental facility or improvement.
- c. Any combination of items mentioned in subparts a. and b.

A special user project, during its economic life, is to be principally used by one or more for-profit entities other than as lessee under a true lease. A special user project may include all appurtenances and incidental facilities such as land, a headquarters or office facility, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, waterways, docks, wharves, and other improvements necessary or convenient for the construction, maintenance, and operation of any structure.

(22) True lease. -- A lease that has a fair market value rental and is not treated as a financing lease or installment sale for federal tax law purposes.

" § 63A-3. Creation of Authority and Board.

(a) Creation. The North Carolina Air Cargo Airport Authority is created as a body corporate and politic having the powers and jurisdiction as provided under this Chapter or any other law. The Authority is a State agency created to perform essential governmental and public functions. The Authority shall be located within the Department of Transportation, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Transportation and, notwithstanding any other provision of law, shall be subject to the direction and supervision of the Secretary only with respect to the management functions of coordinating and reporting.

(b) Board of Directors. The Authority shall be governed by a Board of Directors. The Board shall consist of at least the following 14 members:

- (1) Seven members appointed by the Governor.
- (2) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (3) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
- (4) The State Treasurer, who shall serve as an ex officio non-voting member.

The Board may consist of more than 14 members if more members are appointed by boards of county commissioners in accordance with this subsection. Within 90 days after the Authority acquires land, either by purchase or condemnation, for development as part of a cargo airport complex site, the board of county commissioners in any county in which a portion of the land is located may, by resolution, appoint a person to serve as a member of the Board. If the board of commissioners appoints one of its own members to the Board, the county commissioner who is appointed is considered to be serving on the Board as an ex officio voting member as part of the duties of the office of county commissioner, in accordance with G.S. 128-1.2, and is not considered to be serving in a separate office.

As the holder of an office, each member of the Board shall take the oath required by Article VI, § 7 of the North Carolina Constitution before assuming the duties of a Board member.

(c) Selection Criteria. Of the members appointed by the Governor, at least two shall be residents of the western region of the State, at least two shall be residents of the piedmont region of the State, and at least two shall be residents of the eastern region of the State. In addition, at least one member appointed by the Governor shall be representative of business, at least one shall be representative of agribusiness, at least one shall be representative of environmental interests, and at least one shall be representative of industrial interests.

Of the members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one shall be a resident of the western region of the State, one shall be a resident of the piedmont region of the State, and one shall be a resident of the eastern region of the State. Of the members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one shall be a resident of the western region of the State, one shall be a resident of the piedmont region of

the State, and one shall be a resident of the eastern region of the State.

(d) Terms. Except for the terms of the initial Board members, Board members shall serve two-year terms that begin on July 1. The terms of the initial members appointed by the Governor or the General Assembly end June 30, 1993. The initial term of a member appointed by a board of county commissioners ends on the second June 30 after the appointment.

(e) Chair and Vice-chair of the Board. The Governor shall designate one of the members appointed by the Governor as the Chair of the Board. The Governor shall convene the first meeting of the Board, at which time the members of the Board shall elect from their membership a Vice-chair of the Board.

(f) Vacancies. All members of the Board shall remain in office until their successors are appointed and qualify. A vacancy in an appointment made by the Governor or a board of county commissioners shall be filled by the Governor or the board of county commissioners for the remainder of the unexpired term. A vacancy in an appointment made by the General Assembly shall be filled in accordance with G.S. 120-122. A person appointed to fill a vacancy shall qualify in the same manner as a person appointed for a full term.

(g) Removal of Board Members. The Governor may remove any member of the Board for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The person who appointed a member of the Board may remove the member for using improper influence in accordance with G.S. 143B-13(c).

(h) Organization of the Board. The Board shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Board may determine. A quorum shall consist of at least eight members of the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all rights and to perform all the duties of the Board and the Authority.

(i) Compensation of the Board. No part of the revenues or assets of the Authority shall inure to the benefit of or be distributable to the members of the Board or officers or other private persons. The members of the Board shall receive no salary for their services but shall be entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

(j) Treasurer. The Board shall select the Authority's treasurer. The Board shall require a surety bond of the appointee in the amount as the Board may fix, and the premium shall be paid by the Authority as a necessary expense of the Authority.

(k) Executive Director and other Employees. The Board shall appoint an executive director, whose salary shall be fixed by the Board, to serve at its pleasure. The executive director or a person designated by the executive director shall appoint, employ, dismiss, and, within the limits of available funding, fix the compensation of other employees as considered necessary.

(l) Office. The Board shall establish an office for the transaction of the Authority's business at the place the Board finds advisable or necessary to implement the provisions of this Chapter.

" § 63A-4. Powers of the Authority.

(a) The Authority shall have all of the powers necessary to execute the provisions of this Chapter, which shall include at least the following powers:

- (1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.
- (2) To establish, finance, purchase, construct, operate, and regulate cargo airport complexes and to own, finance, lease, sell, or manage real or personal property.
- (3) To charge and collect fees and rents for the use of the cargo airport complexes or for services rendered in the operation of the complexes.
- (4) To contract and enter into agreements with the State, local governments, other authorities of North Carolina, and other states for the interchange of business and to facilitate the business of cargo airport complexes.
- (5) To rent, lease, purchase, acquire, own, encumber, dispose of, or mortgage real or personal property, including the power to acquire property by eminent domain pursuant to G.S. 63A-6.
- (6) To establish, construct, purchase, maintain, equip, and operate any structure or facilities to aid commerce associated with a cargo airport complex, including the construction of highways, bridges, shipping facilities, electronic cargo transfer systems, mass transit systems, and other transportation facilities. Before constructing a highway or a bridge, the Authority shall consult with the Department of Transportation.
- (7) To create and operate agencies and departments needed to implement this Chapter.
- (8) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.

- (9) To apply for, accept, and administer loans and grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available, to expend the money in accordance with the requirements imposed by the lender or donor, and to give any evidences of indebtedness that are required. No indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the Authority shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions.
- (10) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Chapter.
- (11) To execute financing agreements, security documents, and other instruments necessary in exercising its power under this Chapter.
- (12) To fix, charge, collect, pledge, or assign revenues of the Authority.
- (13) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants and employees as may be required in the judgment of the Board and to fix and pay their compensation from funds available to the Authority, and, when approved by the Local Government Commission under G.S. 159-123(e) and (f) as if the Authority were an issuing unit, to select and retain financial consultants, underwriters, and bond attorneys in connection with the issuance of any bonds and to pay for their services out of the proceeds of any bond issue for which their services were performed.
- (14) To issue bonds or notes of the Authority as provided under this Chapter to pay the costs of a project.
- (15) To issue revenue refunding bonds of the Authority as provided under this Chapter.
- (16) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Authority and its officers, directors, agents, employees, adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Authority.
- (17) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20.
- (18) To enter into agreements with counties pursuant to G.S. 63A-15.

- (19) To exercise the powers granted political subdivisions under Article 4, Chapter 63 of the General Statutes, and to exercise the powers granted to municipalities and counties under Article 6, Chapter 63 of the General Statutes, governing public airports and related facilities.
- (20) To act as agent for the United States of America or any agency of the United States in any matter within the purpose of this Chapter. When acting as agent for the United States or one of its agencies, the Authority shall keep the interest of the State paramount.
- (21) With the approval of any unit of local government, to use officers, employees, agents, and facilities of the unit of local government for the purposes and upon the terms as may be mutually agreeable.
- (22) To issue obligations, without Local Government Commission approval, to finance the purchase or acquisition of land or options on land. An obligation may be secured by the land purchased or acquired, may be unsecured, or may be made payable from revenues, the proceeds of notes, bonds, or the sale of any lands, the proceeds of any bonds of the State or moneys appropriated by the State, or any other available moneys of the Authority. An obligation to finance the purchase or acquisition of land or options on land may be sold only to the Escheat Fund as an investment of the Fund pursuant to G.S. 147-69.2(b)(11).
- (23) To receive and use appropriations from the State, including an appropriation from the proceeds of State general obligation bonds or notes.

(b) To execute the powers provided in subsection (a) of this section, the Board shall determine the policies of the Authority by majority vote of the members of the Board present and voting, a quorum having been established. Once a policy is determined, the Board shall communicate it to the executive director, who shall have the sole and exclusive authority to execute the policy of the Authority. No member of the Board shall have the responsibility or authority to give operational directives to any employee of the Authority other than the executive director.

" § 63A-5. Taxation of property of Authority.

Property owned by the Authority is exempt from taxation in accordance with Article V, § 2 of the North Carolina Constitution. Property that is part of or is located on a cargo airport complex site and is not owned by the Authority, including property that is part of a special user project, is not exempt from tax due to its location.

" § 63A-6. Acquisition, disposition, or exchange of real property.

(a) General. The Authority may acquire real property by purchase, negotiation, gift, devise, or eminent domain. Any acquisition or disposition by the Authority of real property or an estate or interest in real property must be reviewed and approved by the Council of State before it can become effective. When the Authority acquires real property owned by the State, the Secretary of the Department of Administration shall execute and deliver to the Authority a deed transferring fee simple title to the property to the Authority.

(b) Eminent Domain. To exercise the power of eminent domain, the Authority shall commence a proceeding in its name and may follow any procedure set by law by which a State agency or a political subdivision of the State may exercise the power of eminent domain. As with other acquisitions, however, the Authority's exercise of the power of eminent domain is subject to review and approval by the Council of State.

The Authority's power of eminent domain applies to all property, including property that is owned by a State agency or a political subdivision of the State and is already devoted to a specific use other than as an airport established under Chapter 63 of the General Statutes. The Authority may acquire by eminent domain property that is owned by a political subdivision and is used as an airport established under Chapter 63 of the General Statutes only after obtaining the approval of the governing body of each political subdivision that established the airport. The Authority may not begin an eminent domain proceeding before it obtains the Council of State's approval for the acquisition of the property to be condemned.

(c) Exchange. The Authority may exchange any property it acquires for other property usable in carrying out the powers conferred on the Authority and also, upon the payment of just compensation, may remove a building, a terminal, or another structure from land needed for its purposes and reconstruct the structure on another location. The Authority may not use the power of eminent domain to acquire property for exchange.

(d) Site selection. In selecting a site for a cargo airport complex, the Authority shall consider comprehensive plans and land-use regulations adopted by local governments and the capability of local governments to provide services as specified in subdivisions (1) through (3) of this subsection. This subsection shall not be construed to require the Authority to comply with any local ordinance, regulation, or plan except as may be otherwise specifically provided by federal or State law, regulation, or rule. Plans, regulations, and capabilities to be considered are:

- (1) Local comprehensive plans, including education, emergency response, law enforcement, water supply, stormwater management, solid waste management, and wastewater treatment.
- (2) Local land use regulations, including appearance, floodplain zoning, subdivision zoning, and watershed protection elements.
- (3) The capability of local governments to provide services and manage growth and development related to establishment of a cargo airport complex.

" § 63A-7. Police power.

(a) The Authority has jurisdiction within a cargo airport complex site. The Board may adopt ordinances regulating traffic and parking within the cargo airport complex site and for the safety and welfare of those using the cargo airport complex. An ordinance adopted under this subsection shall be recorded in the minutes of the Board. A copy of the ordinance shall be filed in the office of the Attorney General of North Carolina and shall be posted at appropriate places in the cargo airport complex site. Any person who violates an ordinance of the Authority is guilty of a misdemeanor and is punishable by a fine of up to fifty dollars (\$50.00) or imprisonment for up to 30 days.

(b) The executive director of the Authority may designate employees of the Authority as special police officers. A person designated as a special police officer has jurisdiction within the cargo airport complex site to arrest a person who violates any federal or State law or any ordinance of the Authority and has other powers to the same extent as police officers of incorporated municipalities. An employee designated as a special police officer shall take the oath of a law enforcement officer set out in G.S. 11-11.

" § 63A-8. Authority funds.

All Authority funds shall be deposited in one or more banks to be designated by the Board. Funds of the Authority shall be paid out only upon warrants signed by the treasurer or assistant treasurer of the Authority and countersigned by the chair, the acting chair, or the executive director. No warrants shall be drawn or issued disbursing any of the funds of the Authority except for a purpose authorized by this Chapter and only when the account or expenditure has been audited and approved by the Authority or its executive director.

" § 63A-9. Bonds and notes.

(a) The Authority may provide for the issuance, at one time or from time to time, of bonds and notes, including bond anticipation notes and renewal notes, of the Authority to carry out its corporate purposes including financing the costs of projects. The principal of and interest on the bonds or notes shall be payable from funds

provided under this Chapter for their payment. A bond anticipation note may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, from any available Authority revenues or other funds provided for this purpose. Bonds and notes may also be paid from the proceeds of any credit facility.

All bonds, notes, or refunding bonds or notes of the Authority are subject to this section and G.S. 63A-10. All bonds, notes, or refunding bonds or notes to finance or refinance a special user project are also subject to G.S. 63A-11.

The bonds and notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the Authority or otherwise, at one or more prices, on one or more dates, and upon the terms and conditions set by the Authority. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner upon terms and conditions set by the Authority.

A bond or note shall bear interest at a rate or rates, including variable rates, as determined by the Local Government Commission with the approval of the Authority. A bond or note may be secured by a reserve fund created for that purpose and funded from proceeds of the bond or note, revenues, or any other source of funds available to the Authority.

(b) In fixing the details of bonds or notes, the Authority may provide that the bonds or notes may:

- (1) Be payable from time to time on demand or tender for purchase by the owner of the bond or note if a credit facility supports the bond or note, unless the Local Government Commission specifically determines that a credit facility is not required because the absence of a credit facility will not materially and adversely affect the financial position of the Authority and the marketing of the bonds or notes at a reasonable interest cost to the Authority.
- (2) Be additionally supported by a credit facility.
- (3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.
- (4) Be capital appreciation bonds.
- (5) Bear interest at a rate or rates that may vary, including variations permitted pursuant to a par formula.
- (6) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the Authority.

(c) Notes and bonds shall mature at the times determined by the Authority, not to exceed 40 years from the date of issue. The Authority shall determine the form and manner of execution of a bond or note, including any interest coupons to be attached to the bond or note. The Authority shall fix the denominations and places of payment of principal and interest of the bond or note. The principal of and interest on a bond or note may be paid at any bank or trust company, whether located inside or outside the United States of America.

(d) The validity of a bond, note, or coupon that has the signature or facsimile signature of a person who was an officer when the bond, note, or coupon was signed or the facsimile signature attached but who is not that officer when the bond, note, or coupon is delivered is not affected by the change in officers. A bond, note, or coupon may bear the signature or facsimile signature of a person who will be the proper officer to sign the bond, note, or coupon when it is executed but who is not the officer on the date of the bond, note, or coupon.

(e) The Authority may provide for any of the following:

- (1) Authentication of a bond or note by a trustee or other authenticating agent.
- (2) Issuance of a bond or note as a certificated obligation, an uncertificated obligation, or both.
- (3) Issuance of a bond or note in coupon form, in registered form, or both.
- (4) Registration of a coupon bond or note as to principal alone or as to both principal and interest.
- (5) The reconversion of a bond or note registered as to both principal and interest into a coupon bond or note.
- (6) The interchange of registered and coupon bonds or notes.
- (7) A system for registration in accordance with Chapter 159E of the General Statutes.
- (8) Replacement of a bond or note that has been mutilated, lost, or destroyed.

(f) The Authority may not issue a bond or note under this Chapter, other than an obligation permitted under G.S. 63A-4(a)(22), unless its issuance is approved by the Local Government Commission, and it is sold by the Local Government Commission. To obtain approval of a bond or note, the Authority shall file an application for approval with the Local Government Commission. The application shall contain the information required by the Local Government Commission.

In determining whether to approve a proposed bond or note issue of the Authority, the Local Government Commission shall consider the following:

- (1) For bonds or notes to finance airport projects, the criteria for its approval of revenue bonds under G.S. 159-86.
- (2) For bonds or notes to finance special user projects, the criteria used for its approval of industrial bonds under G.S. 159C-8.
- (3) The effect of the proposed financing upon any proposed or scheduled sale of obligations by the State, another State agency, or a unit of local government.

The Local Government Commission shall approve the proposed bond or note issue if it determines that the proposed financing for the issue meets the criteria and will effect the purposes of this Chapter.

When the Local Government Commission approves a bond or note issue of the Authority, the Authority may submit a written request to the Local Government Commission to sell the approved bonds or notes. Upon receiving a written request, the Local Government Commission shall consult with the Authority on the manner in which the bonds or notes will be sold and the price or prices at which the bonds or notes will be sold. With the approval of the Authority, the Local Government Commission shall sell the bonds or notes either at public or private sale in the manner and at the prices determined to be in the best interest of the Authority and to effect the purposes of this Chapter.

Bonds or notes may be issued under this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of any department, division, commission, board, body, bureau, or other agency of the State or without any other proceedings or conditions except as specifically authorized by this Chapter or by the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

(g) Each bond or note that is represented by an instrument shall contain a statement signed by the Secretary of the Local Government Commission, or an assistant designated by the Secretary, certifying that the issuance of the bond or note has been approved under this Chapter. The signature may be a manual signature or a facsimile signature, as determined by the Local Government Commission. Each bond or note that is not represented by an instrument shall be evidenced by a writing relating to the obligation that identifies the obligation or the issue of which it is a part, contains the signed statement certifying approval of the Local Government Commission that is required on an instrument, and is filed with the Local Government Commission. A certification of approval by the Local Government Commission is conclusive evidence that a bond or note complies with this Chapter.

(h) The proceeds of a bond or note shall be used solely for the purposes for which the bond or note was issued and shall be disbursed in accordance with the resolution authorizing the issuance of the bond or note and with any trust agreement securing the bond or note.

(i) Prior to the preparation of definitive bonds, the Authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery.

(j) The Authority may secure a bond or note issued under this Chapter by a trust agreement between the Authority and a corporate trustee. The corporate trustee may be any trust company or bank having the powers of a trust company inside or outside the State. The Authority may secure a bond or note issued under this Chapter by a deed of trust. The trustee of the deed of trust may be an individual who is a resident of the State. A bank or trust company that is incorporated in this State and is a depository of the proceeds of obligations, revenues, or other money of an Authority may furnish indemnifying bonds or pledge securities required by the Authority.

The pledge of any assets, income, or revenues of the Authority to the payment of the principal of or the interest on any obligations of the Authority is binding from the time the pledge is made, and any assets, income, or revenues of the Authority are immediately subject to the lien of the pledge without any physical delivery or other act. The lien created by a pledge is binding against all persons who have claims of any kind against the Authority, regardless of whether they have notice of the lien.

(k) A resolution authorizing the issuance of a bond or note and a trust agreement securing a bond or note may provide that any moneys held under the resolution or trust agreement may be temporarily invested pending disbursement. Any officer with whom, or any bank or trust company with which, the moneys are deposited is considered a trustee of the moneys and must hold and apply the moneys for their stated purpose in accordance with this Chapter and the resolution or trust agreement. The Authority may invest any moneys, other than the proceeds of bonds issued to finance special user projects, as allowed in G.S. 147-69.1 for investments of the State Treasurer or in this subsection. The proceeds of bonds issued to finance special user projects may be invested as provided in the security document for the bonds.

In connection with or incidental to the acquisition or carrying of any investment relating to bonds, program of investment relating to bonds, or carrying of bonds, the Authority may, with the approval of the Local Government Commission, enter into a contract to place the investment or obligation of the Authority, as represented by the bonds,

investment, or program of investment and the contract or contracts, in whole or in part, on an interest rate, currency, cash-flow, or other basis, including the following:

- (1) Interest rate swap agreements, currency swap agreements, insurance agreements, forward payment conversion agreements, and futures.
- (2) Contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or stock or other indices.
- (3) Contracts to exchange cash flows or a series of payments.
- (4) Contracts to hedge payment, currency, rate, spread, or similar exposure, including interest rate floors or caps, options, puts, and calls.

The Authority may enter a contract of this type in connection with, or incidental to, entering into or maintaining any agreement that secures bonds. A contract shall contain the payment, security, term, default, remedy, and other terms and conditions the Board considers appropriate. The Authority may enter a contract of this type with any person after giving due consideration, where applicable, of the person's credit-worthiness as determined by a rating by a nationally recognized rating agency or any other criteria the Board considers appropriate. In connection with, or incidental to, the issuance or carrying of bonds, or the entering of any contract described in this subsection, the Authority may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and other terms and conditions as the Authority determines. Proceeds of bonds and any moneys set aside and pledged to secure payment of bonds or any of the contracts entered into under this subsection may be pledged to and used to service any of the contracts entered into under this section.

(l) Bonds and notes and their transfer, including any profit made on the their sale, are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes. The interest on bonds and notes is not subject to taxation as income, and the bonds and notes are not subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation.

(m) Bonds or notes issued under this Chapter shall not constitute a debt secured by a pledge of the faith and credit of the State or a political subdivision of the State and shall be payable solely from the revenues, income, or assets of the Authority that are pledged for their payment. The face of each bond or note issued shall contain a statement that the Authority is obligated to pay the bond or note or the

interest on the bond or note only from the revenues, income, or assets pledged in payment of the bond or note and that neither the faith and credit nor the taxing power of the State or any political subdivision of the State is pledged in payment of the principal of or the interest on the bond or note.

(n) The State pledges to the holder of a bond or note issued under this Chapter that, as long as the bond or note is outstanding and unpaid, the State will not limit or alter the power the Authority had when the bond or note was issued in a way that impairs the ability of the Authority to produce revenues sufficient with other available funds to do all of the following:

- (1) Maintain and operate the project for which the bond or note was issued.
- (2) Pay the principal of, interest on, and redemption premium, if any, of the bond or note.
- (3) Fulfill the terms of an agreement with the holder.

The State further pledges to the holder of a bond or note issued under this Chapter that the State will not impair the rights and remedies of the holder concerning the bond or note.

(o) Obligations issued under this Chapter are made securities in which all public officers and public bodies of the State and its political subdivisions, and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. The obligations are made securities that may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State is now or may be authorized by law.

" § 63A-10. Refunding bonds or notes.

(a) Issuance. -- The Authority may issue refunding bonds or notes for the purpose of refunding any outstanding bonds or notes issued under this Chapter, including any redemption premium on the bonds or notes and any interest accrued or to accrue to the date of redemption. Refunding bonds or notes shall be issued in accordance with the same procedures and requirements as bonds or notes. Refunding bonds or notes may be sold or exchanged for outstanding bonds and notes issued under this Chapter.

Refunding bonds or notes may have different interest rates and maturities than the bonds or notes being refunded. The proceeds of refunding bonds or notes may be applied to any of the following:

- (1) The payment, purchase, and retirement of the bonds or notes being refunded by direct application to the payment, purchase, and retirement.
- (2) The payment, purchase, and retirement of the bonds or notes being refunded by the deposit in trust of the proceeds.
- (3) The payment of any expenses incurred in connection with the refunding.
- (4) For any other uses not inconsistent with the refunding.

(b) Proceeds. -- The proceedings providing for the issuance of refunding bonds or notes may limit the investments in which the proceeds of a particular refunding issue may be invested. Unless prohibited by the proceedings, the proceeds of refunding bonds or notes that are deposited in trust for the payment, purchase, and retirement of outstanding bonds or notes may be invested in any of the following:

- (1) Direct obligations of the United States of America.
- (2) Obligations whose principal and interest are guaranteed by the United States of America.
- (3) Evidences of ownership of a proportionate interest in an obligation that is described in subdivisions (1) or (2) of this subsection and is held in a custodial capacity by a bank or trust company organized under the laws of the United States of America or a state.
- (4) Obligations of the State or a unit of local government of the State when payment of the principal of and interest on the obligations has been provided for by depositing with a trustee or other escrow agent obligations that meet all of the following:
 - a. Are described in subdivisions (1), (2), or (3) of this subsection.
 - b. When due and payable, will provide enough money when added to any other money held in trust for this purpose to pay the principal of, premium, if any, and interest on the State or local obligations.
 - c. Are rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service, Inc.
- (5) Obligations of the State or a unit of local government when payment of the principal and interest on the obligations is insured by a bond insurance company rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service, Inc.
- (6) Full faith and credit obligations of the State or a unit of local government of the State that are rated in the highest

category by Standard & Poor's Corporation and Moody's Investors Service, Inc.

- (7) Any obligations or investments in which the State Treasurer is then authorized to invest funds of the State.

(c) Scope. -- This section does not limit any of the following:

- (1) The period for which the proceeds of refunding bonds or notes may be held in trust to retire the bonds or notes that are being refunded and have not matured, are not redeemable or, if redeemable, have not been called for redemption.

- (2) The power to issue bonds or notes for the combined purpose of refunding outstanding bonds or notes and of providing funds for any other corporate purpose.

" § 63A-11. Special user project bonds or notes.

(a) The Authority may, subject to the provisions of this section, G.S. 63A-9, and, if applicable, G.S. 63A-10, issue, at one time or from time to time, bonds and notes to finance or refinance special user projects. Bonds and notes to finance or refinance special user projects may be sold irrespective of the interest limitations in G.S. 24-1.1.

(b) Bonds or notes issued by the Authority under this section are special, limited obligations of the Authority payable solely from the following:

- (1) The Authority's revenues, income, or assets that it specifically assigns or pledges for payment.
- (2) The funds, collateral, and undertakings of a private party that are assigned or pledged by that party.

(c) Bonds and notes issued under this section may be secured by one or more agreements, including foreclosure deeds of trust and other trust instruments. An agreement may pledge and assign to the trustee or the holders of its obligations the assets, revenues, and income provided for the security of the bonds or notes, including proceeds from the sale of any special user project or part thereof, insurance proceeds, condemnation awards, and third-party agreements, and may convey or mortgage the project and other property and collateral to secure a bond issue.

The Authority may subordinate the bonds or notes or its rights, assets, revenues, and income derived from any special user project to any prior, contemporaneous, or future securities or obligations or lien, mortgage, or other security interest.

(d) Notwithstanding any other provision of law, the Authority may agree that all contracts relating to the acquisition, construction, installation, and equipping of the special user project shall be solicited, negotiated, awarded, and executed by the private parties for

which the Authority is financing the special user project or any agents of the private parties subject only to approval by the Authority as the Authority may require. The Authority may, out of the proceeds of bonds or notes, make advances to or reimburse the private parties or their agents for all or a portion of the costs incurred in connection with the contracts.

(e) The provisions of G.S. 25-9-104(e) and G.S. 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of the North Carolina Uniform Commercial Code, G.S. 25-9-101 to G.S. 25-9-607 inclusive, shall apply to transactions under this section, but not to transactions involving the issuance of bonds for airport projects, to the same extent the provisions of Article 9 would apply were G.S. 25-9-104(e) and G.S. 25-9-302(6) repealed.

" § 63A-12. Public hearing requirements.

To the extent federal tax law requires public hearings to be held with respect to the issuance of bonds to finance projects, the hearings may be called for by the executive director and held before one or more members of the Board of the Authority. The hearings may be held at any place within the State pursuant to public notice given in accordance with current federal tax regulations. To the extent federal tax law requires approval following the hearing of the issuance of bonds to finance a project, the approval shall be sought from the Governor following a report to the Governor of the results of the public hearing accompanied by information relating to the purposes for the proposed bond issue.

" § 63A-13. Financing agreements.

Every financing agreement shall contain provisions ensuring all of the following:

- (1) That the amounts payable under the financing agreement are sufficient to pay, when due, the principal of, redemption premium, if any, and interest on the bonds issued to pay the costs of the special user project.
- (2) That the operator pays all costs incurred by the Authority in connection with the financing and administration of the special user project, except costs paid out of the proceeds of bonds or otherwise, including, but without limitation, insurance costs, the cost of administering the financing agreement and the security document, and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants, and others.
- (3) That the operator pays all the costs and expenses of operation, maintenance, and upkeep of the special user project.

- (4) That the operator's obligation to provide for the payment of the bonds in full is not subject to cancellation, termination, or abatement until the payment of the bonds or provision for their payment is made.

The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor shall have an option to purchase, or require that the obligor purchase, the special user project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision therefor, shall have been made.

The financing agreement may provide the Authority with rights and remedies in the event of a default by the obligor including, without limitation, any one or more of the following:

- (1) Acceleration of all amounts payable under the financing agreement.
- (2) Reentry and repossession of the special user project.
- (3) Termination of the financing agreement.
- (4) Leasing or sale of foreclosure of the special user project to others.
- (5) Taking whatever actions at law or in equity may appear necessary or desirable to collect the amounts payable under, and to enforce covenants made in, the financing agreement.

The Authority's interest in a special user project under a financing agreement may be that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party, or otherwise, but the Authority need not have any ownership or possessory interest in the special user project.

The Authority may assign all or any of its rights and remedies under the financing agreement to the trustee or the bondholders under a security document.

The financing agreement may contain additional provisions as in the determination of the Board are necessary or convenient to effectuate the purposes of this Chapter. When, as provided in G.S. 63A-9 and G.S. 63A-11, the Local Government Commission approves the issuance of bonds by the Authority, the Commission shall also approve all financing agreements and security documents.

" § 63A-14. Security documents.

Bonds issued under the provisions of this Chapter may be secured by a security document which may be a trust instrument between the Authority and a bank or trust company or individual within the State, or a bank or a trust company outside the State, as trustee. The security document may pledge and assign the revenues provided for

the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds and condemnation awards, and may convey or mortgage the project and other property to secure a bond issue.

The revenues and other funds derived from the project, except for any part as may be necessary to provide reserves therefor, if any, may be set aside at regular intervals as may be provided in the security document in a sinking fund which may be pledged to, and charged with, the payment of the principal of and the interest on the bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as provided. The pledge shall be valid and binding from the time when the pledge is made. The revenues pledged and received by the Authority shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether the parties have notice. The use and disposition of money to the credit of the sinking fund shall be subject to the provisions of the security document. The security document may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

- (1) Acceleration of all amounts payable under the security document.
- (2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds.
- (3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds.
- (4) Rights to bring and maintain such other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depository of the proceeds of bonds, revenues, or other funds provided under this Chapter to furnish indemnifying bonds or to pledge securities as may be required by the Authority. All expenses incurred in carrying out the provisions of the security document may be treated as a part of the cost of the project in connection with which bonds are issued or as an expense of administration of the project.

The Authority may subordinate the bonds or its rights under the security document or otherwise to any prior, contemporaneous, or

future securities or obligations or lien, mortgage, or other security interest.

" § 63A-15. County agreements.

(a) Any county in which all or part of a cargo airport complex site is located may enter into an agreement with the Authority providing for payments to be made by the county to the Authority. A county may not enter into an agreement to make payments to the Authority until after the Authority designates the cargo airport complex site. The county's obligations under the agreement shall not constitute a pledge of its faith and credit.

" § 63A-16. Remedies.

Any owner of bonds or notes issued under the provisions of this Chapter or any coupons appertaining thereto, and the trustee under any trust agreement securing or resolution authorizing the issuance of such bonds or notes, except to the extent the rights given may be restricted by the trust agreement or resolution, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the trust agreement or resolution, or under any other contract executed by the Authority pursuant to this Chapter; and may enforce and compel the performance of all duties required by this Chapter or by the trust agreement or resolution by the Authority or by any officer of the Authority.

" § 63A-17. Status of bonds and notes under Uniform Commercial Code.

All bonds and notes and interest coupons, if any, issued under this Chapter are made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General Statutes.

" § 63A-18. Zoning power of Authority.

(a) The Authority has exclusive zoning jurisdiction within a cargo airport complex site. The Authority has zoning jurisdiction within four miles of the boundaries of a cargo airport complex site. The Authority has zoning jurisdiction sufficient to restrict the height of any structure to be erected, and the height to which any tree may grow, within six miles of the boundaries of a cargo airport complex site.

(b) No State agency and, in accordance with G.S. 63-31, no political subdivision may adopt, without obtaining the approval of the Authority, either of the following if it conflicts with a zoning provision or land use restriction adopted by the Authority:

- (1) An airport zoning provision or other land use regulation that affects real property within four miles of any cargo airport complex site.

- (2) An airport zoning provision or other land use regulation that affects the height of any structure or tree within six miles of a cargo airport complex site.

A zoning provision or land use restriction adopted in violation of this subsection is not effective.

"§ 63A-19. Goals for participation by minorities, women, and the disabled.

(a) The Authority shall verify its efforts to achieve the goals established in this section for participation by minority business enterprises, women's business enterprises, and disabled business enterprises in the total value of contracts awarded by the Authority in each of the following categories:

- (1) Contracts for capital construction or repair projects.
- (2) Contracts for goods.
- (3) Contracts for professional and other services.

(b) The goals for the Authority are as follows:

- (1) Ten percent (10%) participation by minority business enterprises.
- (2) Five percent (5%) participation by women's business enterprises.
- (3) Two percent (2%) participation by disabled business enterprises.

In determining participation in contract awards, a contract shall be counted as participation by a minority business enterprise without regard to the gender of the owner, but only if the business does not qualify as a disabled business enterprise. A contract shall be counted as participation by a women's business enterprise only if the business does not also qualify as a disabled business enterprise. A contract shall be counted as participation by a disabled business enterprise without regard to the race or gender of the owner. The goals in this section, instead of any goals in Article 8 of Chapter 143 of the General Statutes, apply to the Authority. With respect to projects for which the Authority would not receive federal funds if it adhered to the goals in this section because the goals are contrary to or are inconsistent with 14 C.F.R. Part 152, Subpart E, Nondiscrimination in Airport Aid Program, the federal law and regulations supersede this section to the extent it is contrary to or inconsistent with the federal law and regulations.

(c) The following definitions apply in this section:

- (1) Disabled business enterprise. -- A legal entity, other than a joint venture, that is organized to engage in commercial transactions and is at least fifty-one percent (51%) owned and controlled by one or more disabled persons.

- (2) Disabled person. -- A handicapped person as defined in G.S. 168A-3.
- (3) Minority business enterprise. -- A legal entity, other than a joint venture, that is organized to engage in commercial transactions and is at least fifty-one percent (51%) owned and controlled by one or more minority persons.
- (4) Minority person. -- A member of one of the following groups: African-Americans, Hispanic-Americans, American Indians, or Asian-Americans.
- (5) Women's business enterprise means a legal entity, other than a joint venture, that is organized to engage in commercial transactions and is at least fifty-one percent owned and controlled by one or more women.

" § 63A-20. Officers not liable.

No member or officer of the Authority shall be subject to any personal liability or accountability by reason of his execution of any bonds or notes or the issuance of any bonds or notes.

" § 63A-21. Conflicts of interest.

If any member, officer, or employee of the Authority shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly, in any contract with the Authority, the interest shall be disclosed to the Board and shall be set forth in the minutes of the Board. The member, officer, or employee having an interest shall not participate on behalf of the Authority in the authorization of any contract. Other provisions of law notwithstanding, failure to take any or all actions necessary to carry out the purposes of this section may not affect the validity of any bonds or notes issued under this Chapter.

" § 63A-22. Cooperation by other State agencies.

All State officers and agencies shall render the services to the Authority within their respective functions as may be requested by the Authority.

" § 63A-23. Annual and quarterly reports.

The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the General Assembly, and the Local Government Commission. Each report shall be accompanied by an audit of its books and accounts. The costs of all audits, whether conducted by the State Auditor's staff or contracted with a private auditing firm, shall be paid from funds of the Authority.

The Authority shall submit quarterly reports to the Joint Legislative Commission on Governmental Operations. The reports shall summarize the Authority's activities during the quarter and contain

any information about the Authority's activities that is requested by the Commission.

" § 63A-24. General laws apply to Authority; exceptions.

Except as provided in this section, the general laws that apply to State agencies apply to the Authority. The following general laws, to the extent provided below, do not apply to the Authority:

- (1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts for services listed in 49 U.S.C. § 2210(a)(16) or contracts for special user projects. That Article also does not apply to other contracts for projects, but, with respect to these other contracts, the powers and duties established in that Article shall be exercised by the Authority and the Secretary of Administration, and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.
- (2) Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised by the Authority and the Secretary of Administration, and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.
- (3) Except for G.S. 146-29.1, 146-79, and 146-80, Chapter 146 of the General Statutes does not apply to the Authority.

" § 63A-25. Dissolution.

Whenever the Board shall by resolution determine that the purposes for which the Authority was formed have been substantially fulfilled and that all bonds issued and all other obligations incurred by the Authority have been fully paid or satisfied, the Board may declare the Authority to be dissolved. On the effective date of the resolution, the title to all funds and other property owned by the Authority at the time of the dissolution shall vest in the State and possession of the funds and other property shall be delivered to the State."

Sec. 1.1. If the General Assembly does not appoint members to the Board of Directors of the North Carolina Air Cargo Airport Authority by July 19, 1991, as authorized by G.S. 63A-3 of this act, the positions are considered vacant and shall be filled in accordance with G.S. 120-122. The Board of Directors of the Authority may not take any action until the six positions designated for appointment by the General Assembly under G.S. 63A-3, as enacted by this act, are filled.

Sec. 1.2. It is the intent of the General Assembly to authorize counties to create an airport district that includes part or all of a cargo

airport complex site and to give the airport district the power to support the cargo airport with property tax revenue.

Sec. 2. Interpretation of act. (a) This act shall not be deemed to exclude additional or alternative methods for executing the provisions of this act, shall be regarded as supplemental to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) This act, being necessary for the health and welfare of the people of this State, shall be liberally construed to effect its purposes.

(c) Insofar as the provisions of this act are inconsistent with the provisions of any general laws, the provisions of this act shall be controlling.

(d) Insofar as the provisions of this act are inconsistent with the provisions of any local, special, or private laws, the provisions of those laws are repealed to the extent of the conflict.

(e) If any provisions of this act or its application are held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

(f) References in this act to specific acts, sections, or Chapters of the General Statutes are intended to be references to such acts, sections, or Chapters as they may be amended from time to time by the General Assembly.

Sec. 2.1. The North Carolina Air Cargo Airport Authority shall reimburse the Highway Fund for amounts appropriated from that Fund to the Authority. The Authority shall make this reimbursement from revenue from fees and other charges imposed by the Authority in connection with a cargo airport complex established by the Authority. The reimbursements shall be made when revenue is available to do so.

Sec. 2.2. The Legislative Research Commission may study the laws concerning the North Carolina Air Cargo Airport Authority, as enacted by this act. The Commission may determine whether the powers and duties given the Authority are appropriate and if any modifications in the Authority's powers are needed. The Commission may also determine if any changes in the law are needed with respect to local governmental units that may seek the location of an air cargo airport complex within or near the unit. The Commission may make an interim report to the 1992 Session of the 1991 General Assembly and a final report to the 1993 General Assembly.

Sec. 3. G.S. 63-31 is amended by adding a new subsection to read:

"(f) A political subdivision may not adopt an airport zoning regulation in violation of G.S. 63A-18."

Sec. 4. G.S. 126-5(c1) is amended by adding a new subdivision to read:

"(15) Employees of the North Carolina Air Cargo Airport Authority."

Sec. 5. G.S. 143-336 reads as rewritten:

"§ 143-336. *Definitions.*

As used in this Article:

'Agency' includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.

'Community college buildings' means all buildings, utilities, and other property developments located at a community college, which is defined in G.S. 115D-2(2).

'Department' means the Department of Administration, unless the context otherwise requires.

'Public buildings' means all buildings owned or maintained by the State in the City of Raleigh, but does not mean any building which a State agency other than the Department of Administration is required by law to care for and maintain.

'Public buildings and grounds' means all buildings and grounds owned or maintained by the State in the City of Raleigh, but does not mean any building or grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

'Public grounds' means all grounds owned or maintained by the State in the City of Raleigh, but does not mean any grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

'Secretary' means the Secretary of Administration, unless the context otherwise requires.

'State buildings' mean all State buildings, utilities, and other property developments except the State Legislative Building, railroads, highway structures, ~~and bridge structures,~~ bridge structures, and any buildings, utilities, or property owned or leased by the North Carolina Air Cargo Airport Authority.

But under no circumstances shall this Article or any part thereof apply to the judicial or to the legislative branches of the State."

Sec. 6. G.S. 120-123 is amended by adding a new subdivision to read:

"(25a) The North Carolina Air Cargo Airport Authority as established under G.S. 63A-3."

Sec. 7. G.S. 66-58(b) is amended by adding a new subdivision to read:

"(17) The North Carolina Air Cargo Airport Authority or a lessee of the Authority."

Sec. 8. G.S. 147-69.2(b) is amended by adding the following subdivision to read:

"(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Air Cargo Airport Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars (\$25,000,000), that have a final maturity not later than September 1, 1999. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from any such loss by appropriating to such Escheat Fund funds equivalent to such loss."

Sec. 9. G.S. 150B-1(d), as amended by Chapters 418 and 477 of the 1991 Session Laws, is further amended by adding a new subdivision to read:

"(5) The North Carolina Air Cargo Airport Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex."

Sec. 10. G.S. 150B-1(e), as amended by Chapter 418 of the 1991 Session Laws, is further amended by adding a new subdivision to read:

"(10) The North Carolina Air Cargo Airport Authority with respect to to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex."

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-4 reads as rewritten:

" § 126-4. *Powers and duties of State Personnel Commission.*

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

- (1) A position classification plan which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.
- (2) A compensation plan which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.
- (3) For each class of positions, reasonable qualifications, as to age, character, physical condition, and other attributes pertinent to the work to be performed.
- (4) A recruitment program to attract applicants to public employment and determine the relative fitness of applicants for the respective positions.
- (5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment. The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s, ~~Birthday for all years after 1987. Provided, however, that the Jr.'s Birthday and Veterans Day. The Commission shall not provide for a greater number of total paid holidays than were established for the year 1986. The Commission shall not delete Veterans Day as a holiday, more than 11 paid holidays per year except that in those years in which Christmas Day falls on a Tuesday, Wednesday, or Thursday, the Commission shall not provide for more than 12 paid holidays.~~
- (6) The appointment, promotion, transfer, demotion and suspension.
- (7) Cooperation with the Department of Public Instruction, the State Board of Education, the Board of Governors of the University of North Carolina, and the colleges and universities of the State in developing pre-service and in-service training programs.
- (7a) The separation of employees.
- (8) The evaluation of employee performance, the granting of salary increments, and a program of meritorious ~~service~~ service awards.

- (9) The investigation of complaints and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, and reinstatement in all cases as the Commission shall find justified.
- (10) Such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and reasonable system of personnel administration. This subdivision may not be construed to authorize the establishment of an incentive pay program.
- (11) In cases where the Commission finds discrimination or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved.
- (12) Repealed by Session Laws 1987, c. 320, s. 2.
- (13) Repealed by Session Laws 1987, c. 320, s. 3.
- (14) The implementation of G.S. 126-5(e).
- (15) Recognition of State employees, public personnel management, and management excellence.

Such policies and rules shall not limit the power of any elected or appointed department head, in his discretion and upon his determination that it is in the best interest of the Department, to transfer, demote, or separate a State

- (1) Employee in a grade 60 or lower position who has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;
- (2) Employee in a grade 61 to grade 65 position who has not been continuously employed by the State of North Carolina for the immediate 36 preceding months;
- (3) Employee in a grade 66 to grade 70 position who has not been continuously employed by the State of North Carolina for the immediate 48 preceding months; or
- (4) Employee in a grade 71 or higher position who has not been continuously employed by the State of North Carolina for the immediate 60 preceding months."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

H.B. 601

CHAPTER 751

AN ACT TO REGULATE THE LEASING OF RAILROAD CORRIDORS BY THE DEPARTMENT OF TRANSPORTATION FOR PUBLIC RECREATION PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

" § 136-44.36C. Recreational leasing requirements.

Portions of rail corridors held by the North Carolina Department of Transportation in fee simple absolute may be leased by the Department for interim public recreation use provided the following conditions are met:

- (1) Before requesting trail use, a sponsoring unit of local government has held a public hearing in accordance with G.S. 143-318.12 and notified the owners of all parcels of land abutting the corridor as shown on the county tax listing of the hearing date, place, and time by first-class mail at the last addresses listed for such owners on the county tax abstracts. A transcript of all public comments presented at the hearing has been sent to the North Carolina Department of Transportation at the time of requesting use of the corridor.
- (2) A unit of local government has requested use of the rail corridor or a portion thereof for interim public recreational trail use, and agrees in writing to assume all development costs as well as management, security, and liability responsibilities as defined by the North Carolina Department of Environment, Health, and Natural Resources and the North Carolina Department of Transportation.
- (3) Adjacent property owners are offered broad voting representation by membership in the organization, if any, that is delegated most immediate responsibility for development and management of the rail-trail by the sponsoring local government.
- (4) The North Carolina Department of Transportation has determined that there will not likely be a need to resume active rail service in the leased portion of the rail corridor for at least 10 years.
- (5) Any lease or other agreement allowing trail use includes terms for resumption of active rail use which will assure unbroken continuation of the corridor's perpetual use for railroad purposes and interim compatible uses.

- (6) Use of the rail corridor or portions thereof as a recreational trail does not interfere with the ultimate transportation purposes of the corridor as determined by the North Carolina Department of Transportation."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 103

CHAPTER 752

AN ACT TO CLARIFY SUBCHAPTER S CORPORATION LOSS CARRYFORWARDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-131.4(e) reads as rewritten:

"(e) Each shareholder's pro rata share of the reduction of an S Corporation's income because of the allowance of a carryforward loss to the S Corporation under this subsection shall be taken into account by the shareholder as a transitional adjustment under G.S. 105-134.7. Notwithstanding the provisions of subsection (a) of this section, an S Corporation that sustained a net economic loss in a taxable year beginning before January 1, 1989, may carry the loss forward to a taxable year beginning on or after January 1, 1989, and before July 1, 1991, and may deduct the loss in ~~that~~ each year to one-half of the extent it could have carried forward and deducted the loss pursuant to G.S. 105-130.5(b)(4) and G.S. 105-130.8 if the S Corporation Income Tax Act had not become effective until taxable years beginning on or after July 1, 1991. Any loss carryforward allowed as a deduction by this subsection may not exceed one-half of the S Corporation's net income, as defined in the Code subject to the adjustments provided in G.S. 105-130.5 other than the adjustment provided in G.S. 105-130.5(b)(4), and is subject to the limitations provided in G.S. 105-131.4(b) and (d). Notwithstanding the provisions of G.S. 105-130.8(4), a net economic loss carried forward to a 1990 or 1991 taxable year pursuant to this subsection is not applied to or offset by that part of the net income of a preceding tax year from which the loss was not deductible solely due to the 'one-half' limitations provided in this subsection. Notwithstanding the provisions of G.S. 105-131.3, the basis of a shareholder in the stock of an S Corporation shall be adjusted for the shareholder's pro rata share of the carryforward loss allowed as a deduction to the S Corporation under this subsection. Notwithstanding the provisions of G.S. 105-131.6(c)(2), the accumulated adjustments account maintained for each resident shareholder shall be adjusted for the

shareholder's pro rata share of the carryforward loss allowed as a deduction to the S Corporation under this subsection."

Sec. 2. This act is effective retroactively for taxable years beginning on or after January 1, 1989, and expires for taxable years beginning on or after July 1, 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

H.B. 366

CHAPTER 753

AN ACT TO INCREASE THE AMOUNT OF SICK LEAVE CREDITABLE TOWARD RETIREMENT FOR LOCAL GOVERNMENT EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 128-26(e) reads as rewritten:

"(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof not to exceed ~~one month~~ 12 days of credit for each ~~two years~~ year of prior and membership service or fraction thereof, but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 128-24(1a) and who subsequently returns to service for a period of five years, may thereafter repay the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when this account was closed.

On and after July 1, 1973, a member whose account in the Teachers' and State Employees' Retirement System was closed on account of absence from service under the provisions of G.S. 135-3(3) and who subsequently became or becomes a member of this System with credit for five years of service, may thereafter repay in a lump sum the amount withdrawn from the Teachers' and State Employees' Retirement System plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his

creditable service in this System by the amount of creditable service lost when his account was closed.

Notwithstanding any other provision of this Chapter, any member who entered service or was restored to service prior to July 1, 1982, and was excluded from membership service solely on account of having attained the age of 62 years, in accordance with former G.S. 128-24(3a), may purchase membership service credits for such excluded service by making a lump-sum payment equal to the contributions that would have been deducted pursuant to G.S. 128-30(b) had he been a member of the Retirement System, increased by interest calculated at a rate of seven percent (7%) per annum. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction.

On and after January 1, 1986, the creditable service of a member who was a member of the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by participating employers from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, includes service that was creditable in the Law Enforcement Officers' Retirement System; and membership service with that System is membership service with this Retirement System; provided, notwithstanding any provisions of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law Enforcement Officers' Retirement System may not be diminished and may be purchased as creditable service with this Retirement System under the same conditions that would have otherwise applied."

Sec. 2. It is the intent of the 1991 General Assembly to give every consideration to post-retirement increases or cost-of-living adjustments for retirees and other surviving beneficiaries of the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, the Consolidated Judicial Retirement System, and the Legislative Retirement System during the 1992 Regular Session of the 1991 General Assembly. Until such consideration is given, no post-retirement increases shall be granted for 1991 under the provisions of G.S. 120-4.22A, G.S. 128-27(k), G.S. 135-5(o), or G.S. 135-65(a).

Sec. 3. This act becomes effective July 1, 1991, and applies to retirements on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 917

CHAPTER 754

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES, AND TO MAKE OTHER AMENDMENTS TO THE LAW.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1991."

An outline of the provisions of the act follows this section. The outline shows the heading "-----CONTENTS/INDEX-----" and lists by general category the descriptive captions for the various sections and groups of sections that compile the act.

-----CONTENTS/INDEX-----

This outline is designed for reference only, and the outline and the corresponding entries throughout the act in no way limit, define, or prescribe the scope or application of the text of the act. The listing of the original bill or resolution in the outline of this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the provisions contained in the original bill or resolution.

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1

Sec. 2.2

Sec. 2.3

Sec. 2.4

Sec. 2.5

Sec. 2.6

Sec. 2.7

Sec. 2.8

Sec. 2.9

Sec. 2.10

PART III.-----RAILROAD ADVISORY COMMISSION

(H.B. 57 - Abernethy, S.B. 86 - Block)

- Sec. 3.1**
- Sec. 3.2**
- Sec. 3.3**
- Sec. 3.4**
- Sec. 3.5**
- Sec. 3.6**
- Sec. 3.7**
- Sec. 3.8**
- Sec. 3.9**
- Sec. 3.10**
- Sec. 3.11**
- Sec. 3.12**
- Sec. 3.13**

PART IV.-----STATE PERSONNEL STUDY COMMISSION

(H.B. 109 - Fitch; S.B. 64 - Sands)

- Sec. 4.1**
- Sec. 4.2**
- Sec. 4.3**
- Sec. 4.4**
- Sec. 4.5**
- Sec. 4.6**

PART V.-----SOCIAL SERVICES STUDY COMMISSION

(H.B. 173 - Easterling)

- Sec. 5.1**
- Sec. 5.2**
- Sec. 5.3**
- Sec. 5.4**
- Sec. 5.5**
- Sec. 5.6**
- Sec. 5.7**
- Sec. 5.8**
- Sec. 5.9**

PART VI.-----MENTAL HEALTH STUDY COMMISSION

(H.B. 533 - Isenhower, S.B. 408 - Walker)

- Sec. 6.1**
- Sec. 6.2**
- Sec. 6.3**
- Sec. 6.4**

PART VII.-----MOTOR FUEL PRICING STUDY COMMISSION

(H.B. 557 - Hardaway)

- Sec. 7.1
- Sec. 7.2
- Sec. 7.3
- Sec. 7.4
- Sec. 7.5
- Sec. 7.6
- Sec. 7.7
- Sec. 7.8
- Sec. 7.9

PART VIII.-----JOINT LEGISLATIVE COMMISSION ON
SEAFOOD AND AQUACULTURE STUDY OF THE TRANSFER
OF THE AUTHORITY VESTED IN THE MARINE FISHERIES
COMMISSION TO GRANT SHELLFISH LEASES TO THE
SECRETARY OF THE DEPARTMENT OF ENVIRONMENT,
HEALTH, AND NATURAL RESOURCES

(H.B. 1032 - Grady)

- Sec. 8.1
- Sec. 8.2

PART IX.-----COMMISSION ON ACCESS TO HEALTH
INSURANCE

(H.B. 1077 - Jeralds, S.B. 595 - Perdue)

- Sec. 9.1
- Sec. 9.2
- Sec. 9.3
- Sec. 9.4
- Sec. 9.5
- Sec. 9.6
- Sec. 9.7
- Sec. 9.8
- Sec. 9.9
- Sec. 9.10

PART X.-----ENERGY ASSURANCE STUDY COMMISSION
CONTINUATION

- Sec. 10.1
- Sec. 10.2

PART XI.-----JOINT SELECT FISCAL TRENDS AND REFORM
COMMISSION

- Sec. 11.1

**PART XII.-----ENVIRONMENTAL REVIEW COMMISSION TO
STUDY PERMITTING OF PRIVATELY OPERATED LANDFILLS**

(H.B. 1090 - Privette)

Sec. 12.1

Sec. 12.2

**PART XIII.-----JOINT LEGISLATIVE COMMISSION ON
SEAFOOD AND AQUACULTURE STUDY OF LICENSE TO SELL
FISH**

(H. B. 1105 - Payne)

Sec. 13.1

**PART XIV.-----AGRICULTURE, FORESTRY, AND SEAFOOD
AWARENESS STUDY COMMISSION**

(H.B. 1167 - James)

Sec. 14.1

**PART XV.-----ENVIRONMENTAL REVIEW COMMISSION TO
STUDY ENVIRONMENTAL POLICY ACT ISSUES**

(H.B. 1227 - Gottovi)

Sec. 15.1

Sec. 15.2

PART XVI.-----MOUNTAIN AREA STUDY COMMISSION

(H.B. 1261 - N.J. Crawford)

Sec. 16.1

Sec. 16.2

Sec. 16.3

Sec. 16.4

Sec. 16.5

Sec. 16.6

Sec. 16.7

Sec. 16.8

Sec. 16.9

Sec. 16.10

**PART XVII.-----BIRTH-RELATED
IMPAIRMENT STUDY COMMISSION**

NEUROLOGICAL

Sec. 17.1

Sec. 17.2

Sec. 17.3

Sec. 17.4

Sec. 17.5

PART XVIII.-----ENVIRONMENTAL REVIEW COMMISSION TO STUDY PUBLIC LANDFILLS

(S.B. 813 - Perdue)

Sec. 18.1**Sec. 18.2****Sec. 18.3****PART XIX.-----AGING STUDIES**

(S.B. 861 - Perdue)

Sec. 19.1**Sec. 19.2****PART XX.-----APPROPRIATION FOR STUDIES****Sec. 20.1****PART XXI.-----EFFECTIVE DATE****Sec. 21.1****PART II.-----LEGISLATIVE RESEARCH COMMISSION**

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1991 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

- (1) Revenue Laws and the Administration of these Laws, including reviewing the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable--study continued (H.J.R. 7 - Lilley).
- (2) Medical Malpractice Claims Arbitration -- study continued (H.B. 120 - Robinson, S.B. 65 - Sands),
- (3) Surface Water Issues, including consumptive uses of water and the effect of such uses on the State's water resources, other present and projected uses of water, impoundments, and water resources management--study continued (H.J.R. 127 - Payne, S.J.R. 85 - Block),
- (4) State Parks and Recreation Areas--study continued (H.B. 141 - N.J. Crawford),
- (5) Homeless Persons--study continued (H.J.R. 164 - Lutz),
- (6) Worker Training Trust Fund--study continued (H.B. 170 - James, S.B. 203 - Raynor),

- (7) Impact of National Developments within the North Carolina Depository Institutions Industry (H.B. 177 - Brubaker).
- (8) Department of Transportation Condemnation Practices and Procedures, including the determination of land to be taken, the negotiations with the owner, "quick take" procedures, bringing the condemnation action in court, the compensation, and the award of interest paid on the compensation award (H.B. 261 - Gamble).
- (9) Education and Training of Nurses and Shortage of Nurses (H.B. 312 - Nesbitt, S.B. 276 - Daniel).
- (10) Horse Racing in North Carolina, including its economic and societal impacts, the benefits to the agribusiness industry in the State, potential taxes and fees that could be collected, methods for regulation, and other related issues (H.B. 341 - James, S.B. 917 - Martin of Guilford).
- (11) Effectiveness and Efficiency of the Public Health System's Delivery of Health Services to the Citizens of the State -- study continued (H.B. 476 - Payne, S.B. 367 - Walker, S.B. 407 - Walker).
- (12) All Issues, Including Insurance Coverage, Relating to Individual, Personal Liability of State Personnel for Official Acts (H.B. 509 - Flaherty).
- (13) Alternative Approaches to Deal with Discrimination in Employment (H.B. 555 - Kennedy).
- (14) Information on the Financial Soundness of Financial Institutions (H.B. 580 - Gamble).
- (15) Turfgrass and Forage Assessment, including the issue of allowing producers and others in the industry to levy upon themselves an assessment for the purpose of generating funds for research and educational activities relating to the use of turfgrass and forage (H.B. 633 - James, S.B. 702 - Murphy).
- (16) Financial Institutions, including regulations and taxes applicable to commercial banks, savings institutions, and credit unions (H.J.R. 696 - Gamble).
- (17) Public Transportation (H.J.R. 700 - Hurley).
- (18) Governor's Powers (H.J.R. 731 - James).
- (19) Crop Depredation Caused by Wildlife such as Deer and Bear (H.J.R. 732 - James).
- (20) Boating and Water Safety (H.B. 834 - Brawley).
- (21) Transfer of the Soil and Water Conservation Division of the Department of Environment, Health, and Natural Resources to the Department of Agriculture (H.J.R. 856 - James).

- (22) Transfer of the Forest Resources Division of the Department of Environment, Health, and Natural Resources to the Department of Agriculture (H.J.R. 857 - James).
- (23) Use of Prison Inmates (H.J.R. 867 - Albertson).
- (24) Regulation of Temporary and Other Employment Agencies; Consumer Protection Issues; Licensing Boards (H.J.R. 917 - Wainwright, H.B. 284 - Hasty, H.B. 154 - Holmes).
- (25) Workers' Compensation for Farm Workers (H.B. 952 - Hackney).
- (26) Inequities in the Salaries of Equally Qualified Minorities, Females, and Nonminority Males within Occupational Categories in State Employment (H.B. 957 - Fitch, S.J.R. 839 - Martin of Guilford).
- (27) Glass and Plastic Beverage Container Deposits and Refunds (H.B. 1007 - Gottovi).
- (28) Amortization of Nonconforming Uses of Property (H.B. 1009 - S. Hunt).
- (29) Ways to Promote the Conservation of Energy and the Use of Renewable Energy Sources in Residential, Commercial, Industrial, and Public Facilities (H.J.R. 1021 - Luebke, S.J.R. 789 - Plexico).
- (30) Rights of Victims of Crime (H.B. 1033 - Grady).
- (31) Prehospital Emergency Cardiac Care (H.J.R. 1051 - Green).
- (32) Promoting the Development of Environmental Science and Bridging Environmental Science and Technology with Public Policy Decision Making (H.B. 1070 - Woodard).
- (33) Economic Development and Revitalization of Downtowns (H.J.R. 1083 - Hasty).
- (34) Methods to Increase the Developmental Lending Capacity of Financial Institutions to Strengthen Low and Moderate Income Communities (H.B. 1084 - McAllister).
- (35) Hazardous Waste Treatment and Disposal--study continued. (H.J.R. 1095 - Hightower).
- (36) Feasibility of Toll Roads (H.B. 1098 - Bowman).
- (37) Basic Civil Rights of Law Enforcement Officers (H.J.R. 1130 - Miller).
- (38) Statewide Comprehensive Planning (H.J.R. 1157 - Hardaway).
- (39) Length of the School Year and Compulsory School Attendance Ages Issues (H.B. 1186 - Rogers).

- (40) Management of Hazardous Materials Emergencies and Establishment of Regional Response Teams (H.B. 1210 - Flaherty, S.B. 922 - Martin of Pitt),
- (41) Firefighter Benefits, including retirement, death, and disability (H.J.R. 1211 - Fitch),
- (42) Railroads--study continued, including the present condition of the rail transportation system, the future of railroads, rail revitalization, and rail corridor preservation (H.J.R. 1226 - Abernethy, S.J.R. 906 - Block),
- (43) Uniform Administration of All County Register of Deeds Offices (H.B. 1232 - Buchanan),
- (44) Transfer of the Health Divisions from the Department of Human Resources to the Department of Environment, Health, and Natural Resources (H.J.R. 1280 - Jeralds),
- (45) Regulation of Aerial Application of Pesticides (H.J.R. 1289 - James),
- (46) Minority Tourism Proposal, including ways to encourage minorities to visit the State for the purposes of tourism, conferences, and conventions (H.J.R. 1292 - Hardaway),
- (47) Annexation Laws (H.J.R. 1295 - Decker),
- (48) Pay Plan for State Employees,
- (49) Development of a State Strategy for the Protection of All Groundwater Resources -- study continued (S.J.R. 13 - Tally),
- (50) Physical Fitness Among North Carolina Youth (S.B. 15 - Tally),
- (51) Solid Waste and Medical Waste Management -- study continued, including the use of incineration, particularly the use of mobile incinerators, as a method of treatment (S.J.R. 143 - Tally),
- (52) Advance Disposal Fees Used To Promote Nonhazardous Solid Waste Reduction and Recycling (S.B. 229 - Odom),
- (53) Public School Administrators (S.B. 441 - Perdue),
- (54) Motor Vehicle Towing and Storage (S.B. 687 - Sands),
- (55) Revision of the Arson Statutes (S.J.R. 736 - Sands),
- (56) Tourism's Growth and Effect -- study continued (S.B. 819 - Warren),
- (57) Emergency Medical Services Act of 1973 (S.J.R. 902 - Speed),
- (58) State Correctional Education (S.B. 945 - Carter),
- (59) State Emergency Management Program, including natural hazards, recovery operations for Presidential or Gubernatorial declared disasters, and catastrophic hazards (S.J.R. 946 - Basnight),

- (60) Law Enforcement Issues (S.J.R. 955 - Perdue).
- (61) Teacher Leave (H.B. 334 - Bowman).
- (62) North Carolina Air Cargo Airport Authority (S.B. 649).
- (63) Licensure of Radiologic Technologists as requested in the Final Assessment Report on Senate Bill 738 by the Legislative Committee on New Licensing Boards.
- (64) Sales Tax Impact on Merchants, including the effects of the short notice time for the implementation of the 1991 sales tax increase, and
- (65) Methods to Improve Voter Participation.

Sec. 2.2. Child Day Care Issues (H.B. 1062 - Easterling). The Legislative Research Commission may study the issue of child day care. The study may focus its examination on the issues related to child day care as they relate to availability, affordability, and quality of child day care in North Carolina, including:

- (1) Prior recommendations of other study commissions which have reviewed child day care services since 1980 and an assessment of compliance with these recommendations;
- (2) The advantages and costs associated with measures to improve the quality of day care, including lowering staff/child ratios, enhancing day care teacher credentialing, improving training of day care teachers, and improving the salaries of all day care workers;
- (3) Measures to enhance the availability and affordability of day care in currently underserved areas of the State, especially rural communities;
- (4) Ways to maximize the positive impact on North Carolina's child day care providers and resource and referral networks from the availability of federal funds under the Child Care Block Grant;
- (5) The implementation of the Governor's Uplift Child Day Care initiative;
- (6) The current statutory regulation of child day care and the procedures used to develop policies and rules under the current structure; and
- (7) The relationship between child day care services offered by for-profit and nonprofit, public and private, day care providers to other potential sources of child care and child development services including Head Start programs and North Carolina's public schools, with a view toward developing a unified State policy for funding and delivery of all early childhood development services.

Sec. 2.3. Beach and FAIR Plans Study (Basnight, Block). The Legislative Research Commission may study the North Carolina

Insurance Underwriting Association and its operation of the Beach Plan, which was authorized by Article 45 of Chapter 58 of the General Statutes to provide an adequate market for essential property insurance in the beach area of North Carolina; and the underwriting association of the FAIR Plan and its operation of the FAIR Plan, which was authorized by Article 46 of Chapter 58 of the General Statutes to facilitate the issuance of basic property insurance to encourage the improvement of properties considered to be high risk. The study, if undertaken, may include the following:

- (1) The operating procedures and operating plans of the Beach Plan and the FAIR Plan;
- (2) How the Beach Plan and the FAIR Plan effect coverage;
- (3) The types of coverage offered, including coverage for wind and hail damage, by the Beach Plan and the FAIR Plan, and coverage availability and cost; and
- (4) Whether the operations of the Beach Plan and the FAIR Plan are fulfilling the purposes of the plans, as stated in their statutory authorizations.

Sec. 2.4. North Carolina Indian Cultural Center Study (Martin of Guilford, Parnell). The Legislative Research Commission may study the issue of developing the North Carolina Indian Cultural Center in Robeson County. This study may include:

- (1) The purpose of and need for the North Carolina Indian Cultural Center and the history of its development up to the current time;
- (2) Identification of the barriers to the Center's development, the impact of those barriers, and methods for overcoming those barriers;
- (3) Examination of various models of similar centers to determine if those models are adaptable to circumstances in North Carolina;
- (4) Determination of the direct and collateral benefits to be derived from this project and to whom those benefits accrue; and
- (5) Any related issues the committee deems appropriate.

Sec. 2.5. Lobbyist Regulation Study (Odom). The Legislative Research Commission may study the implementation of House Bill 89, if ratified. The study, if undertaken, may include the following issues:

- (1) Whether additional changes should be made in Article 9A of Chapter 120 of the General Statutes concerning lobbying and lobbyists;
- (2) Whether the law governing lobbying and lobbyists should be expanded to cover lobbying of the executive branch.

including administrative agencies, boards and the Council of State; and

- (3) Lobbying in the General Assembly by State departments, agencies, boards, local governments, or other organizations.

Sec. 2.6. Governmental Ethics Study (S.B. 259 - Daniel). The Legislative Research Commission may study the advisability of, by law, adopting or authorizing the adoption of ethical codes for State and local governmental officials and employees in North Carolina. If the study is undertaken, the Commission may investigate:

- (1) The strengths and weaknesses of the present systems of helping to insure ethical conduct for administrative officials and employees at the State and local level;
- (2) Whether a single agency should be established to coordinate the State and local efforts at insuring ethical administrative conduct, or whether local government units should have a separate mechanism or mechanisms to accomplish this end;
- (3) If coordinating agency or agencies should be created or authorized:
 - a. The agency or agencies' duties and powers, including the authority to create codes of ethics for those officials and employees, and to advise those affected on the conformity of conduct to those codes;
 - b. Adequate standards on which to base these codes;
 - c. The public officials and employees who should be subject to the jurisdiction of the agency or agencies;
 - d. The sanctions, if any, which should attend the violation of an established ethical code; and
- (4) Whether the present criminal law is adequate to cover grossly offensive unethical conduct.

Sec. 2.7. Committee Membership. For each Legislative Research Commission Committee created during the 1991-93 biennium, the cochair of the Commission shall appoint the Committee membership.

Sec. 2.8. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1992 Regular Session of the 1991 General Assembly or the 1993 General Assembly, or both.

Sec. 2.9. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.10. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART III.-----RAILROAD ADVISORY COMMISSION

(H.B. 57 - Abernethy, S.B. 86 - Block)

Sec. 3.1. There is created the Railroad Advisory Commission. The Commission shall consist of 12 members, appointed as follows:

- (1) Two members appointed by the Governor, one of whom shall be knowledgeable about the railroad business and one of whom shall be an advocate of passenger rail service;
- (2) The Speaker of the House of Representatives or another member of the House of Representatives serving as the Speaker's designee, and two other members of the House of Representatives appointed by the Speaker of the House of Representatives;
- (3) The President Pro Tempore of the Senate or another member of the Senate serving as the President Pro Tempore's designee, and two other members of the Senate appointed by the President Pro Tempore of the Senate;
- (4) The Secretary of Transportation, or a member of his staff appointed by the Secretary of Transportation;
- (5) The State Treasurer, or a member of his staff appointed by the Treasurer;
- (6) Two officers or directors of the North Carolina Railroad Company appointed by its Board of Directors.

The Attorney General or the Attorney General's designee shall also participate and attend meetings of the Commission in accordance with Section 3.12 of this Part.

Sec. 3.2. Commission members shall be appointed no later than September 1, 1991, and shall serve at the pleasure of the appointing authority. Any vacancies on the Commission shall be filled by the original appointing authority. The President Pro Tempore of the Senate or the President Pro Tempore's designee on the Commission shall call the initial meeting of the Commission.

Sec. 3.3. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint a cochair from the membership of the Commission.

Sec. 3.4. The cochairs of the Commission may appoint an Executive Committee for any purpose as determined by the Commission.

Sec. 3.5. Members of the Commission shall be reimbursed as follows:

- (1) Members of the General Assembly shall receive subsistence and travel allowances as provided in G.S. 120-3.1.
- (2) All other members shall receive per diem, subsistence, and travel allowances as provided in G.S. 138-5.

Sec. 3.6. The Commission shall terminate June 30, 1995.

Sec. 3.7. The Governor, in making appointments to the Board of Directors of the North Carolina Railroad Company under the charter provisions, should seek to ensure continuity in the Board and to maintain cooperation between the Board and the Commission.

Sec. 3.8. The Commission or its Executive Committee may meet in executive session.

Sec. 3.9. The Commission shall advise the Governor, Council of State, and General Assembly on its opinion of any proposed lease or other transaction involving all or a substantial portion of the assets of the North Carolina Railroad Company. If shareholder approval by the Governor and Council of State of a lease or other transaction is required, the Commission shall advise the Governor, Council of State, and General Assembly of its opinion on whether approval should be granted.

Sec. 3.10. If the Commission determines by June 30, 1993, that it is unable to recommend any action, it shall report that fact to the General Assembly so that alternative action may be taken before the expiration of the leases on December 31, 1994.

Sec. 3.11. Upon recommending to the General Assembly a lease or other transaction, the Commission shall also recommend the use to be made of increased dividend payments.

Sec. 3.12. The Department of Justice shall provide necessary assistance to the Commission.

Sec. 3.13. There is appropriated from the General Fund to the Department of Justice the sum of \$20,000 for the 1991-92 fiscal year and the sum of \$20,000 for the 1992-93 fiscal year for the operation of the Commission created by this Part.

PART IV.-----STATE PERSONNEL STUDY COMMISSION

(H.B. 109 - Fitch, S.B. 64 - Sands)

Sec. 4.1. There is created a Study Commission on the State Personnel System to be composed of nine members: three Senators to be appointed by the President Pro Tempore of the Senate, three Representatives to be appointed by the Speaker of the House, and three public members to be appointed by the Governor. The President Pro Tempore of the Senate and the Speaker of the House shall each designate a cochairman from their appointees. Either cochairman may call the first meeting of the Study Commission.

Vacancies shall be filled in the same manner as the original appointments were made.

Sec. 4.2. The Study Commission is authorized to study all aspects of the State Personnel System including, but not limited to, the impact of State and local governmental employees' retirement benefits increases, the impact of the exemption from State taxes of State, local, federal, and private retirement benefits, and public employees' day care and medical and dental benefits.

Sec. 4.3. With the prior approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the Offices of the House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. With the prior approval of the Legislative Services Commission, the Study Commission may hold its meetings in the State Legislative Building or the Legislative Office Building.

Sec. 4.4. The Study Commission may submit an interim report of its findings and recommendations and the status of its work on or before the first day of the 1992 Regular Session of the 1991 General Assembly. The Study Commission shall submit a final written report of its findings and recommendations on or before the convening of the 1993 Session of the General Assembly. All reports shall be filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Upon filing its final report, the Commission shall terminate.

Sec. 4.5. Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1;
- (2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6;
- (3) All other Commission members, at the rate established in G.S. 138-5.

Sec. 4.6. There is allocated from the funds appropriated to the General Assembly's Legislative Services Commission to the Study Commission on the State Personnel System for its work the sum of \$25,000 for the 1991-92 fiscal year and the sum of \$20,000 for the 1992-93 fiscal year.

PART V.-----SOCIAL SERVICES STUDY COMMISSION

(H.B. 173 - Easterling)

Sec. 5.1. There is reestablished and continued the Social Services Study Commission, an independent commission, to study public social services and public assistance in North Carolina and to recommend improvements that will assure that North Carolina has cost-effective, consistently administered public social services and public assistance programs.

Sec. 5.2. The Commission shall consist of nine members. The Speaker of the House of Representatives shall appoint three members. The President Pro Tempore of the Senate shall appoint three members. The Governor shall appoint three members. Vacancies shall be filled by the official who made the initial appointment using the same criteria as provided by this section.

Sec. 5.3. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint a cochair of the Commission from their appointees. The cochairs shall call the first meeting and preside at alternate meetings.

Sec. 5.4. The Social Services Study Commission shall continue to examine the need for improvements in the State's social services system and develop legislation to address those needs. The Commission shall also provide oversight and review the further development and implementation of the Social Services Plan. The Commission shall also monitor and review efforts within the Department of Human Resources to plan for the efficient and timely implementation of federal welfare reform provisions.

Sec. 5.5. The Commission members shall receive no salary for their services but shall receive subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable.

Sec. 5.6. Subject to the provisions of G.S. 120-32.02, the Commission may solicit, employ, or contract for professional, technical, or clerical assistance, and may purchase or contract for the materials or services it needs. Subject to the approval of the Legislative Services Commission, the professional and clerical staff of the Legislative Services Office shall be available to the Commission, and the Commission may meet in the Legislative Building or the Legislative Office Building. With the consent of the Secretary of the Department of Human Resources, staff employed by the Department or any of the divisions may be assigned permanently or temporarily to assist the Commission or its staff.

Sec. 5.7. Upon request of the Commission or its staff, all State departments and agencies and all local governmental agencies shall

furnish the Commission or its staff with any information in their possession or available to them.

Sec. 5.8. The Commission shall submit a final written report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate before or upon the convening of the 1993 Session of the General Assembly. The Commission shall terminate upon the filing of the report.

Sec. 5.9. There is allocated from the funds appropriated to the General Assembly's Legislative Services Commission the sum of \$15,000 for the 1991-92 fiscal year and the sum of \$10,000 for the 1992-93 fiscal year for the expenses of the Commission created by this Part.

PART VI.-----MENTAL HEALTH STUDY COMMISSION

(H.B. 533 - Isenhower. S.B. 408 - Walker)

Sec. 6.1. The Mental Health Study Commission, established and structured by 1973 General Assembly Resolution 80; Chapter 806, 1973 Session Laws; Chapter 185, 1975 Session Laws; Chapter 184, 1977 Session Laws; Chapter 215, 1979 Session Laws; 1979 General Assembly Resolution 20; Chapter 49, 1981 Session Laws; Chapter 268, 1983 Session Laws; Chapter 792, 1985 Session Laws; Chapter 873, 1987 Session Laws; and Chapter 802, 1989 Session Laws as amended in 1990; is reestablished and authorized to continue in existence until July 1, 1993.

Sec. 6.2. The continued Mental Health Study Commission shall have all the powers and duties of the original Study Commission as they are necessary to continue the original study, to assist in the implementation of the original and succeeding Study Commission recommendations and to plan further activity on the subject of the study.

Sec. 6.3. Members and staff of the continued Mental Health Study Commission shall receive compensation and expenses as under the original authorization in the 1973 General Assembly Resolution 80. Expenses of the Commission shall be expended by the Department of Human Resources from Budget Code 14460, subhead 1110.

Sec. 6.4. In addition to other studies authorized by law, the Mental Health Study Commission shall:

- (1) Have oversight, review and make recommendations regarding the implementation of the Adult Substance Abuse Treatment Plan, the Comprehensive Long Range Plan for Adults with Severe and Persistent Mental Illness, the Child Mental Health Plan, the Youth Substance Abuse Plan, and the Developmental Disabilities Services Plan;

- (2) Evaluate and develop recommendations regarding quality of services provided for individuals with mental health, developmental disabilities and substance abuse problems;
- (3) Monitor implementation of Commission recommendations to improve mental health, mental retardation and substance abuse services to jails;
- (4) Have oversight, review and make recommendations regarding the implementation of the Pioneer System and the Commission's Long Range Funding Initiatives Project;
- (5) Coordinate with the North Carolina Council on Developmental Disabilities in updating the Developmental Disabilities Services Plan.

PART VII.-----MOTOR FUEL PRICING STUDY COMMISSION

(H.B. 557 - Hardaway)

Sec. 7.1. The Motor Fuel Pricing Study Commission is created. The Commission shall:

- (1) Undertake a comprehensive review and analysis of the methods used to market motor fuels to independent wholesalers and retailers of motor fuel in North Carolina;
- (2) Determine whether these pricing systems are fair to these independent wholesalers and retailers;
- (3) Determine the most fair and equitable means to prevent subsidized and unfair pricing in the marketing of motor fuels to wholesalers and retailers of motor fuel in order to best protect the interests of the citizens of this State; and
- (4) Study whether refiners of motor fuel should be prohibited from owning and operating retail motor fuel outlets in this State.

Sec. 7.2. The Commission shall consist of 10 members to be appointed as follows:

- (1) Five members of the Senate appointed by the President Pro Tempore of the Senate, one of whom shall be designated as cochair.
- (2) Five members of the House of Representatives appointed by the Speaker of the House of Representatives, one of whom shall be designated as cochair.

Sec. 7.3. Members appointed to the Commission shall serve until the Commission makes its final report. Vacancies on the Commission shall be filled in the same manner as the original appointments were made.

Sec. 7.4. Upon request of the Commission or its staff, all State departments and agencies shall furnish to the Commission or its staff any information in their possession or available to them.

Sec. 7.5. The Commission may submit an interim report of its findings and recommendations and the status of its review and analyses to the General Assembly on or before the first day of the 1992 Regular Session of the 1991 General Assembly. The Commission shall submit the final report of its findings and recommendations to the General Assembly on or before January 15, 1993. All reports shall be submitted by filing the report with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The Commission shall terminate upon filing its final report.

Sec. 7.6. The Commission shall meet upon the call of the cochairs.

Sec. 7.7. Upon approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the Offices of the House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

Sec. 7.8. Members of the Commission shall be paid per diem, subsistence, and travel allowances at the rate established in G.S. 120-3.1.

Sec. 7.9. There is allocated from the funds appropriated to the General Assembly's Legislative Services Commission to the Motor Fuel Pricing Study Commission for its work the sum of \$15,000 for the 1991-92 fiscal year and the sum of \$15,000 for the 1992-93 fiscal year.

PART VIII.-----JOINT LEGISLATIVE COMMISSION ON
SEAFOOD AND AQUACULTURE STUDY OF THE TRANSFER
OF THE AUTHORITY VESTED IN THE MARINE FISHERIES
COMMISSION TO GRANT SHELLFISH LEASES TO THE
SECRETARY OF THE DEPARTMENT OF ENVIRONMENT,
HEALTH, AND NATURAL RESOURCES

(H.B. 1032 - Grady)

Sec. 8.1. In addition to the powers and functions set forth in Article 12F of Chapter 120 of the General Statutes, the Joint Legislative Commission on Seafood and Aquaculture shall study the authority vested in the Marine Fisheries Commission to grant shellfish leases and whether that authority should be transferred to the Secretary of the Department of Environment, Health, and Natural Resources.

Sec. 8.2. The Commission may report to the 1992 Regular Session of the 1991 General Assembly, and shall report on or before the first day of the 1993 Legislative Session on its findings, together with any recommended legislation.

PART IX.-----COMMISSION ON ACCESS TO HEALTH INSURANCE

(H.B. 1077 - Jeralds, S.B. 595 - Perdue)

Sec. 9.1. The Commission on Access to Health Insurance is created. The Commission shall study the issues involved in designing a program to ensure that all citizens of the State have access to affordable health insurance that provides coverage for basic health care needs. In conducting its study, the Commission shall consider:

- (1) Programs the State could implement to provide health insurance coverage at an affordable price to all North Carolinians, including the feasibility of:
 - a. An employer-based health insurance plan, which would include a State pool to cover those who are not in the labor force, and the need for tax incentives to enable certain employers to offer health insurance; and
 - b. A comprehensive single payor plan, based on the Canadian health care model.
- (2) Methods of containing the rising costs of health insurance.
- (3) The need for health insurance reform.
- (4) The benefits to be included in a basic health care package.
- (5) How the Access Forum, convened by the North Carolina Institute of Medicine, and other states have proposed to address the problem surrounding access to adequate and affordable health insurance.

Sec. 9.2. The Commission shall consist of 26 members as follows:

- (1) The Speaker of the House of Representatives shall appoint nine members as follows: five members of the House of Representatives; one member who is the president or vice-president of a business employing less than 20 employees; one member who represents a health maintenance organization that provides health care in the State; one member who is a hospital administrator; and one member who is a public member who is uninsured;
- (2) The President Pro Tempore of the Senate shall appoint nine members as follows: five members of the Senate; one member who is the president or vice-president of a business employing more than 100 employees; one member

who is a health care provider: one member who represents an insurance company that provides health insurance coverage in this State; and one public member who is knowledgeable about the problems of the uninsured;

- (3) The President of the North Carolina Medical Society, or his representative;
- (4) The President of the North Carolina Hospital Association, or his representative;
- (5) The Commissioner of Insurance, or his designee;
- (6) The President of North Carolina Citizens for Business and Industry;
- (7) The President of Merchants Association;
- (8) The President of the Foundation for Alternative Health Programs;
- (9) The President of the State Employees Association of North Carolina; and
- (10) The President of the North Carolina AFL-CIO.

Vacancies in the membership appointed under subdivisions (1) and (2) of this section shall be filled by the official who made the initial appointment using the same criteria as provided in this section.

Sec. 9.3. The President Pro Tempore of the Senate shall designate one Senator as cochair and the Speaker of the House of Representatives shall designate one Representative as cochair. The cochairs shall call the first meeting.

Sec. 9.4. In addition to its regular meetings, the Commission shall hold three public hearings across the State, to solicit (i) input about the extent of the problem of the uninsured and underinsured, and (ii) potential solutions to ensure that all citizens have access to adequate and affordable health care.

Sec. 9.5. The Commission shall submit an interim report on or before the first day of the 1991 General Assembly, Regular Session 1992, by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

Sec. 9.6. The Commission shall submit a final report of its findings and recommendations to the General Assembly on or before the first day of the 1993 Session of the General Assembly by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Upon filing its final report, the Commission shall terminate.

Sec. 9.7. Legislative members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. Public members of the Commission shall not receive subsistence, per diem or travel expenses.

Sec. 9.8. The Commission may contract for clerical or professional staff or for any other services it may require in the course of its ongoing study. At the request of the Commission, the Legislative Services Commission may supply members of the staff of the Legislative Services Office and clerical assistance to the Commission as the Legislative Services Commission deems appropriate. The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building.

Sec. 9.9. The Commission may accept gifts, grants, donations, or contributions from any source. These funds shall be held in a separate account and used solely in furtherance of the study.

Sec. 9.10. There is allocated from the funds appropriated to the General Assembly's Legislative Services Commission to the Commission established by this Part the sum of \$50,000 for the 1991-92 fiscal year and the sum of \$50,000 for the 1992-93 fiscal year.

PART X.-----ENERGY ASSURANCE STUDY COMMISSION CONTINUATION

Sec. 10.1. Section 6.4 of Chapter 802 of the 1989 Session Laws, as amended by Section 3.3 of Chapter 1078 of the 1989 Session Laws reads as rewritten:

"Sec. 6.4. The Commission may file an interim report on or before June 1, 1990, and shall file its final report prior to adjournment of the ~~1991 Session~~ 1992 Regular Session of the 1991 General Assembly, with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The report shall summarize the information obtained in the course of the Commission's inquiry, set forth its findings and conclusions, and recommend administrative actions or legislative actions that may be necessary to implement the Energy Assurance Plan. If legislation is recommended, the Commission shall prepare and submit with its report appropriate bills. Upon termination of the Commission, the cochairs shall transmit to the Legislative Library for preservation the records and papers of the Commission. The Commission shall terminate upon the filing of its report."

Sec. 10.2. Funds allocated to the North Carolina Energy Assurance Study Commission pursuant to the provisions of Section 3.1 and Section 3.2 of Chapter 1078 of the 1989 Session Laws which have not been expended at the end of the 1990-91 fiscal year shall not revert but shall remain available to the Study Commission for its expenses during the 1991-92 fiscal year.

PART XI.-----JOINT SELECT FISCAL TRENDS AND REFORM COMMISSION

Sec. 11.1. There is allocated from the funds appropriated to the General Assembly for the Joint Select Fiscal Trends and Reform Commission, created by Chapter 689 of the 1991 Session Laws, the sum of \$50,000 for fiscal year 1991-92 and the sum of \$50,000 for the fiscal year 1992-93.

PART XII.-----ENVIRONMENTAL REVIEW COMMISSION TO STUDY PERMITTING OF PRIVATELY OPERATED LANDFILLS

(H.B. 1090 - Privette)

Sec. 12.1. The Environmental Review Commission shall study the North Carolina Environmental Policy Act of 1971, Article 1 of Chapter 113A of the General Statutes in relation to the permitting of sanitary landfills pursuant to G.S. 130A-294 to determine whether the issuance of a permit for a sanitary landfill to be developed or operated by a private individual, corporation, or partnership should be subject to the requirements of G.S. 113A-4 regarding the preparation of an environmental impact statement.

Sec. 12.2. The Environmental Review Commission may report its findings, together with any recommended legislation, to either the 1992 Regular Session of the 1991 General Assembly or to the 1993 General Assembly by filing copies of its report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

PART XIII.-----JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE STUDY OF LICENSE TO SELL FISH

(H.B. 1105 - Payne)

Sec. 13.1. In addition to the powers and functions set forth in Article 12F of Chapter 120 of the General Statutes, the Joint Legislative Commission on Seafood and Aquaculture shall study whether the State should require a license to sell fish taken from coastal fishing waters and shall make recommendations to the General Assembly including, but not limited to, requiring licenses, license fees, implementation and collection of fees, and use of proceeds from fees. The Commission shall report its findings and recommendations to the 1992 General Assembly.

PART XIV.-----AGRICULTURE, FORESTRY, AND SEAFOOD AWARENESS STUDY COMMISSION

(H.B. 1167 - James)

Sec. 14.1. There is allocated from the funds appropriated to the General Assembly's Legislative Services Commission the sum of \$25,000 for the 1991-92 fiscal year for the work of the Agriculture, Forestry, and Seafood Awareness Study Commission.

PART XV.-----ENVIRONMENTAL REVIEW COMMISSION TO STUDY ENVIRONMENTAL POLICY ACT ISSUES

(H.B. 1227 - Gottovi)

Sec. 15.1. The Environmental Review Commission shall study the following issues concerning Article 1 of Chapter 113A of the General Statutes, the North Carolina Environmental Policy Act of 1971:

- (1) Whether the scope of the North Carolina Environmental Policy Act should be broadened to include:
 - a. Significant private activity that is subject to any public review;
 - b. Actions of local governmental entities;
 - c. Major modifications of existing systems; and
 - d. Industrial facilities currently approved by the Department of Economic and Community Development in conjunction with the Department of Environment, Health, and Natural Resources under G.S. 143B-437.
- (2) Whether all significant adverse effects should be mitigated to the fullest extent possible.
- (3) Whether an analysis of the cumulative effects of all projects should be included in the review of the North Carolina Environmental Policy Act.
- (4) Whether State and local government should be required to report compliance with the North Carolina Environmental Policy Act and whether the Department of Environment, Health, and Natural Resources should be required to enforce compliance.
- (5) Whether all State agencies should be required to adopt environmental review criteria by January 1, 1992, and what those criteria should be.
- (6) Whether public notice, comment, and participation are adequate under the North Carolina Environmental Policy Act.
- (7) Whether to require cost-benefit analysis for large construction projects.

- (8) Whether the current exemptions, such as the current exemption for landfills, should be continued.
- (9) Whether to require the Department of Economic and Community Development to comply with the North Carolina Environmental Policy Act before it issues industrial revenue bonds pursuant to G.S. 159C-7.
- (10) What State agency or department should lead the review of the North Carolina Environmental Policy Act.

Sec. 15.2. The Environmental Review Commission may report its findings, recommendations, and any proposed legislation to the 1992 Regular Session of the 1991 General Assembly and, if the Commission determines that more study is needed, to the 1993 General Assembly.

PART XVI.-----MOUNTAIN AREA STUDY COMMISSION

(H.B. 1261 - N.J. Crawford)

Sec. 16.1. The Mountain Area Study Commission is created. The Commission shall consist of 15 members: four Senators appointed by the President Pro Tempore of the Senate, four Representatives appointed by the Speaker of the House of Representatives, three members representing local government and the public sector appointed by the President Pro Tempore of the Senate, three members representing local government and the public sector appointed by the Speaker of the House of Representatives, and one member to be chosen by the other 14 members of the Commission.

Sec. 16.2. The President Pro Tempore of the Senate shall designate one Senator as cochairman and the Speaker of the House of Representatives shall designate one Representative as cochairman.

Sec. 16.3. The Commission shall:

- (1) Determine specific future consequences of present land-use practices;
- (2) Determine whether increased management of land resources is necessary and helpful to citizens, whether such management should be implemented in mountain areas in the State, and if so, how responsibility for such management should be allocated among various levels of government;
- (3) Determine whether it is appropriate to create a series of special incentives for individuals and local governments to encourage the management of land resources described herein, and if so, what types of incentives are appropriate;
- (4) Make efforts to meet with citizens in mountain areas and to receive their comments regarding the subjects to be evaluated by the Commission; and

- (5) Evaluate programs in other states that are designed to coordinate provision of infrastructure, protection of the environment and natural resources, and efforts to accommodate growth.

Sec. 16.4. The Commission shall submit a final report of its findings and recommendations to the General Assembly on or before the first day of the 1993 Session of the General Assembly by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Upon filing its final report, the Commission shall terminate.

Sec. 16.5. The Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairmen. The Commission may meet in the Legislative Building or the Legislative Office Building.

Sec. 16.6. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1.

Sec. 16.7. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, upon the direction of the Legislative Services Commission. The expenses relating to clerical employees shall be borne by the Commission.

Sec. 16.8. When a vacancy occurs in the membership of the Commission the vacancy shall be filled by the same appointing officer who, or entity which, made the initial appointment.

Sec. 16.9. All State departments and agencies and local governments and their subdivisions shall furnish the Commission and its staff with any information in their possession or available to them.

Sec. 16.10. There is allocated from the funds appropriated to the General Assembly's Legislative Services Commission to the Commission established by this Part for fiscal year 1991-92 the sum of \$20,000 and for fiscal year 1992-93 the sum of \$20,000.

PART XVII.-----BIRTH-RELATED NEUROLOGICAL IMPAIRMENT STUDY COMMISSION

Sec. 17.1. The Birth-Related Neurological Impairment Study Commission, created by Part VI of Chapter 1100 of the 1988 Session Laws, continued by Chapter 64 of the 1989 Session Laws, and continued by Chapter 1078 of the 1990 Session Laws is revived and

shall continue in existence until the *sine die* adjournment of the 1992 Regular Session of the 1991 General Assembly. The Commission shall report its findings and recommendations to the 1992 Regular Session of the General Assembly.

Sec. 17.2. The continued Birth-Related Neurological Impairment Study Commission shall have the powers and duties of the original Commission to continue the work of the original study and to plan further activity on the subject of assisting all birth-related neurologically impaired victims.

Sec. 17.3. The Birth-Related Neurological Impairment Study Commission shall consist of 15 members who shall be appointed as follows:

- (1) Four members of the House of Representatives, appointed by the Speaker of the House of Representatives;
- (2) Four members of the Senate, appointed by the President Pro Tempore of the Senate;
- (3) One at-large member representing the general public, appointed by the Speaker of the House of Representatives;
- (4) One member of the North Carolina State Bar specializing in the representation of birth-related neurologically impaired victims, appointed by the Speaker of the House of Representatives;
- (5) One physician licensed to practice medicine in North Carolina, appointed by the President Pro Tempore of the Senate;
- (6) A director or operator of a long-term residential care facility for birth-related neurologically impaired victims, appointed by the President Pro Tempore of the Senate;
- (7) The State Health Director;
- (8) The President of the North Carolina Hospital Association or his designee; and
- (9) The Executive Director of the Governor's Advocacy Council for Persons with Disabilities or his designee;

If a vacancy occurs in the membership, the appointing authority shall appoint another person to serve the balance of the unexpired term in the same manner in which the original appointment was made.

Sec. 17.4. Members and staff of the continued Birth-Related Neurological Impairment Study Commission shall receive compensation and expenses as under the original authorization in Chapter 110 of the 1987 Session Laws.

Sec. 17.5. Unexpended funds appropriated to the Birth-Related Neurological Impairment Study Commission by the 1990-91 General

Assembly shall remain available and may be expended to fund the continued work of the Commission.

PART XVIII.-----ENVIRONMENTAL REVIEW COMMISSION TO STUDY PUBLIC LANDFILLS

(S.B. 813 - Perdue)

Sec. 18.1. The Environmental Review Commission shall study the North Carolina Environmental Policy Act of 1971, Article 1 of Chapter 113A of the General Statutes, in relation to the permitting of public landfills under G.S. 130A-294 to determine whether the issuance of a permit for a public landfill should be subject to the requirements of G.S. 113A-4 regarding the preparation of an environmental impact statement. The Commission shall examine the following issues:

- (1) All current State regulatory and administrative requirements pertaining to the siting and operation of solid waste management facilities;
- (2) The adequacy of current State laws authorizing local governments to regulate private solid waste management activities, including control over the flow of the waste stream;
- (3) The potential role of the State in developing markets for recyclable materials and compost produced from solid waste; and
- (4) Other matters may be pertinent to the environmentally sound and economically efficient management of solid waste in North Carolina.

Sec. 18.2. The Environmental Review Commission may request an appropriate committee, commission, or State agency to conduct all or any part of the study authorized by this act and to report its findings and recommendations either to the Environmental Review Commission or directly to the General Assembly. If the committee, commission, or State agency agrees to conduct the study, the committee, commission, or State agency shall do so using funds already appropriated or otherwise available to it.

Sec. 18.3. The Environmental Review Commission may report its findings, recommendations, and any proposed legislation to the 1992 Regular Session of the 1991 General Assembly and, if the Commission determines that more study is needed, to the 1993 General Assembly.

PART XIX.-----AGING STUDIES

(S.B. 861 - Perdue)

Sec. 19.1. The North Carolina Study Commission on Aging shall study the need for expanding the membership of the Nursing Home/Rest Home Penalty Review Committee established under G.S. 131D-34. In conducting this study, the Commission shall consider recommending that the membership be expanded by four members, appointed by the General Assembly and representing the following fields of expertise:

- (1) Aging advocacy;
- (2) Community activity in aging and long-term care; and
- (3) Education and research in long-term care.

The Commission shall report its findings and recommendations to the 1992 Regular Session of the 1991 General Assembly.

Sec. 19.2. The North Carolina Study Commission on Aging shall study the concept of "assisted living". For purposes of this study, "assisted living" means a combination of shelter and services for older adults, including maintenance, housekeeping, meals, transportation, 24-hour staffing, and security, but not encompassing "continuing care" as that term is defined and regulated under Article 64 of Chapter 58 of the General Statutes. The Commission's study of assisted living may include:

- (1) The extent and form of providing assisted living in North Carolina;
- (2) Whether assisted living should be licensed as a separate category of care; and
- (3) Whether assisted living services for which a fee is charged should be regulated, and the extent of any regulation.

In conducting its study of assisted living, the Commission shall request the input of the Department of Human Resources, Division of Aging, and Division of Facilities Services. The Commission shall report its findings and recommendations on the study conducted under this section to the 1993 General Assembly, upon its convening.

PART XX.-----APPROPRIATION FOR STUDIES

Sec. 20.1. There is appropriated from the General Fund to the General Assembly's Legislative Services Commission the sum of \$300,000 for the 1991-92 fiscal year to fund the studies, except as otherwise provided, authorized, or directed by this act.

PART XXI.-----EFFECTIVE DATE

Sec. 21.1. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

H.B. 6

CHAPTER 755

AN ACT TO SPECIFY APPOINTMENTS TO THE OPEN
GOVERNMENT THROUGH PUBLIC
TELECOMMUNICATIONS STUDY COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 6.1 of Chapter 1078 of the 1989 Session Laws (1990 Session) reads as rewritten:

"Sec. 6.1. There is created the Study Commission on Open Government Through Public Telecommunications, to be composed of ~~13~~ 16 members, with ~~three~~ four Senators appointed by the President Pro Tempore of the Senate; ~~three~~ four Representatives, one of whom is the Legislative Liaison to the Open Public Events Network Committee, to be appointed by the Speaker of the House; the current and two previous chairmen of the Public Telecommunications Board of Commissioners; the chairman of the Open Public Events Network (ex officio member of the Board of Commissioners by statute); the Secretary of the Department of Administration (designated by statute as ex officio member and secretary of the Board of Commissioners); the chairman of the Planning Committee of the Board of Commissioners; ~~and a representative of the North Carolina cable television industry, industry, to be appointed by the Speaker of the House; and a representative of the public television industry, to be appointed by the President Pro Tempore of the Senate. Appointments will be made within 30 days subsequent to the sine die adjournment of the 1989 Regular Session.~~ Vacancies in an appointive membership shall be filled by the original appointing authority. The chairman of the Study Commission shall be the Legislative Liaison to the Open Public Events Network Committee."

Sec. 2. Section 6.4 of Chapter 1078 of the 1989 Session Laws (1990 Session) reads as rewritten:

"Sec. 6.4. The Study Commission will ~~file~~ make a written report, including recommended legislation, ~~with the presiding officers of the House of Representatives and the Senate, by March 1, 1991. The Study Commission will be considered dissolved upon sine die adjournment of the 1991 Regular Session,~~ to the 1992 Session of General Assembly not later than May 1, 1992. The Study Commission shall terminate upon the filing of the report."

Sec. 3. The new members authorized by this act shall be appointed within 30 days after its ratification. This act shall not affect the status of those already appointed or designated.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

H.B. 274

CHAPTER 756

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, TO PROVIDE FOR ADDITIONAL MEMBERS OF THE BOARD OF TRUSTEES OF THE NORTH CAROLINA MUSEUM OF ART, AND TO MODIFY THE METHOD OF ELECTION OF CERTAIN OFFICERS OF THE GENERAL ASSEMBLY.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments upon the recommendation of the Speaker of the House of Representatives; and

Whereas, the Speaker of the House of Representatives has made recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. J. Carlton Cole of Perquimans County is appointed to the Alarm Systems Licensing Board for a term to expire on June 30, 1992. This is the appointment without statutory requirement for special qualifications. He replaces Van G. Dickens, who has resigned. W. Ray McLester of Mecklenburg County is appointed to the Alarm Systems Licensing Board for a term to expire June 30, 1994. This is the categorical appointment for a person licensed under G.S. Chapter 74D.

Sec. 2. Herbert Dawson of Craven County is appointed to the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan for a term to expire on June 30, 1993.

Sec. 3. Gerald Lamb of Wake County is appointed to the Board of Trustees of the North Carolina Teachers' and State Employees' Retirement System for a term to expire on June 30, 1993.

Sec. 4. Sidney Locks of Pitt County and Ben Aiken of Wake County are appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, each for a term to expire on June 30, 1993.

Sec. 5. John A. Williams of Wake County is appointed cochair of the Commission on School Facility Needs, and W. I. Morris of Alamance County, Morris McGough of Buncombe County, Wilfred L. Robbins of Pender County, and Kathleen R. Crosby of Mecklenburg County are appointed to serve on the Commission, each for a term to expire on June 30, 1995.

Sec. 6. Don Ensley of Pitt County and Michael Barnes of Wilson County are appointed to serve on the Environmental Management Commission, each for a term to expire on June 30, 1993.

Sec. 7. Thomas L. Council of Cumberland County is appointed to the North Carolina Housing Finance Agency Board of Directors for a term to expire on June 30, 1993. This is the categorical appointment for licensed real estate broker. Eleanor Nunn of Wake County is appointed to the North Carolina Housing Finance Agency Board of Directors for a term to expire on June 30, 1993. This is the categorical appointment for a mortgage-services representative. Sheila Nader of Wake County and Cecil Hill of Transylvania County are appointed to the North Carolina Housing Finance Agency Board of Directors, each for a term to expire on June 30, 1993. These are the two appointments without statutory requirement for special qualifications.

Sec. 8. Beverly Blount of Wake County is appointed to the North Carolina Medical Database Commission for a term to expire on June 30, 1994. This appointment is the one affiliated with an employer of 200 or more employees.

Sec. 9. Roy Stevens of Carteret County and Joseph Stevenson of Brunswick County are appointed to the North Carolina State Ports Authority, each for a term to expire on June 30, 1993.

Sec. 10. Julia Taylor of Durham County and Lois Artis of Durham County are appointed to the North Carolina School of Science and Mathematics Board of Trustees, each for a term to expire on June 30, 1993.

Sec. 11. Jim Lowery of Robeson County is appointed to the State Commission on Indians Affairs for a term to expire on June 30, 1993.

Sec. 12. Jeannette Beckwith of Wake County is appointed to the North Carolina Teaching Fellows Commission for a term to expire on June 30, 1995.

Sec. 13. Welton Barnes of Wake County is appointed to the Public Officers and Employees Liability Insurance Commission for a term to expire on June 30, 1995.

Sec. 14. Dr. Tracy R. Watson is appointed to the State Board of Chiropractic Examiners for a term to expire on June 30, 1993.

Sec. 15. Jack Colby of Guilford County is appointed to the State Building Commission for a term to expire on June 30, 1994. This is the categorical appointment for a manager of a physical plant operation.

Sec. 16. Robert Shaw of Robeson County is appointed to the Watershed Protection Advisory Council for a term to expire on June

30, 1993. This is the categorical appointment for a city government representative. William Stanley of Buncombe County is appointed to the Watershed Protection Advisory Council for a term to expire on June 30, 1993. This is the categorical appointment for a county government representative.

Sec. 17. Susan L. Allen of Wake County is appointed to the North Carolina Wildlife Resources Commission for a term to expire on June 30, 1993.

Sec. 18. Paul R. "Jaybird" McCrary of Rowan County is appointed to the North Carolina Sheriffs' Education and Training Standards Commission for a term to commence on September 1, 1991, and to expire on August 31, 1993.

Sec. 19. Lacy McNeil of Dare County is appointed to the North Carolina Seafood Industrial Park Authority for a term to expire on June 30, 1993.

Sec. 20. George C. Cunningham of Wilkes County is appointed to the Property Tax Commission for a term to expire on June 30, 1993.

Sec. 21. Mack Donaldson of Guilford County is appointed to the Private Protective Services Board for a term to expire on June 30, 1994.

Sec. 22. Donna Bryant of Orange County is appointed to the Child Day Care Commission for a term to expire on June 30, 1993. This appointment is the one affiliated with a nonprofit day care facility or plan. Florianna Thompson of Wake County is appointed to the Child Day Care Commission for a term to expire on June 30, 1993. This appointment is the one affiliated with a for-profit day care facility or plan.

Sec. 23. Charles P. Farris of Wilson County is appointed to the North Carolina Criminal Justice Education and Training Standards Commission for a term to expire on June 30, 1993.

Sec. 24. Nancy Preston of Orange County is appointed to the North Carolina Solid Waste Management Capital Projects Financing Agency Board of Directors for a term to expire on June 30, 1993.

Sec. 25. Robert Burford of Wake County is appointed to the Board of Transportation for a term to expire on June 30, 1993.

Sec. 26. Charles Mercer of Wake County is appointed to the State Banking Commission for a term to expire on June 30, 1995.

Sec. 27. Luther Jordan of New Hanover County and William Bynum of Durham County are appointed to the North Carolina Technological Development Authority, each for a term to expire on June 30, 1993.

Sec. 28. Chrystle Swain of Durham County and Bradley Thompson of Wake County are appointed to the Board of the North

Carolina Agency for Public Telecommunications, each for a term to expire on June 30, 1993.

Sec. 29. Judy Ward of Alamance County is appointed to the North Carolina Manufactured Housing Board for a term to expire on June 30, 1994. This is the categorical appointment for a representative of the banking and finance business. Larry Gilmore of Forsyth County is appointed to the North Carolina Manufactured Housing Board for a term to expire on June 30, 1994. This is the categorical appointment for a representative of the insurance industry.

Sec. 30. Cathy Chapman of Mecklenburg County is appointed to the North Carolina Center for Nursing Board of Directors for a term to expire on June 30, 1994. This is the categorical appointment for a nurse. Reese Jenkins of Wake County is appointed to the North Carolina Center for Nursing Board of Directors for a term to expire on June 30, 1993. This is the categorical appointment for a representative of the long-term care industry. David J. McCombs of Guilford County and Rebecca Pitts of Buncombe County are appointed to the North Carolina Center for Nursing Board of Directors, each for a term to expire on June 30, 1992. These are the two appointments without statutory requirement for special qualifications.

Sec. 31. Dana E. Outlaw of Craven County is appointed to the Real Estate Appraisal Board for a term to expire on June 30, 1994. This is the categorical appointment for a real estate appraiser.

Sec. 32. George A. Dorsett, Jr. of Guilford County is appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for a term to expire on June 30, 1993. This is the categorical appointment for a motor fuel service station dealer. Glen Anderson of Wake County is appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for a term to expire on June 30, 1993. This is the categorical appointment for an environmental advocate. John David Grady, Jr. of Wayne County is appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for a term to expire on June 30, 1993. This is the categorical appointment for a person with special training and experience in groundwater contamination from leaking petroleum underground storage tanks.

Sec. 33. Unless otherwise provided, appointments made by this act shall commence upon ratification.

Sec. 34. G.S. 120-37(a) reads as rewritten:

"(a) At the convening of the first session of the General Assembly following each biennial election of members of the General Assembly, each house shall elect a principal clerk, ~~a reading clerk and a sergeant-at-arms for terms of two years,~~ clerk for a term of two years, subject to the condition that each officer shall serve at the pleasure of

the house that elected him or her and ~~shall serve~~ until his or her successor is elected. The reading clerk and sergeant-at-arms of the Senate shall serve for terms of two years, subject to the condition that each serves at the pleasure of the Senate and until the officer's successor is elected. The reading clerk and sergeant-at-arms of the House of Representatives shall serve as provided in the rules of the House."

Sec. 35. G.S. 140-5.13(b) reads as rewritten:

"(b) The Board of Trustees of the North Carolina Museum of Art shall consist of ~~25 members~~, 28 members, chosen as follows:

- (1) The Governor shall appoint ~~eleven~~ twelve members, one from each congressional district in the State in accordance with G.S. 147-12(3b);
- (2) The North Carolina Art Society, Incorporated, shall elect four members;
- (3) The North Carolina Museum of Art Foundation, Incorporated, shall elect four members;
- (4) The Board of Trustees of the North Carolina Museum of Art shall elect four members;
- (5) The General Assembly shall appoint ~~two~~ four members, ~~one~~ two upon the recommendation of the Speaker of the House of Representatives, and ~~one~~ two upon the recommendation of the President of the Senate in accordance with G.S. 120-121;
- (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 49.

All regular appointments or elections except those by the General Assembly shall be for terms of six years, except that each member shall serve until his successor is chosen and qualifies. No person may be appointed or elected to more than two consecutive terms of six years. All regular appointments by the General Assembly shall be for the then current legislative term, and no appointee of the General Assembly may be appointed to more than two consecutive terms of two years."

Sec. 36. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

S.B. 350

CHAPTER 757

AN ACT TO MODIFY LAWS AFFECTING THE OPERATIONS OF THE STATE LIBRARY AND THE MUSEUM OF HISTORY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-170.2 reads as rewritten:

" § 143-170.2. *Publication procedure manuals.*

(a) ~~The Department of Administration, in consultation with at least the State Librarian and the State Auditor, shall establish, distribute,~~ The State Librarian in consultation with the State Auditor shall administer and periodically revise guidelines to be used by all State agencies and community colleges in developing publication procedures manuals for public documents. The initial guidelines developed by the Department of Administration shall be released no later than December 1, 1989 and shall address at least the following elements of publication production for public documents:

- (1) Bibliographic style, substantially in accord with a recognized style manual approved by the State Librarian; provided, however, the Department shall not develop guidelines concerning the design, layout, size or appearance of publications except as otherwise permitted herein;
- (2) Procedures for the notification of the State Library for title changes in serial publications;
- (3) Pricing of documents for resale;
- (4) Use of publication services at State-operated printing facilities;
- (5) Purchase of commercial publication services; and
- (6) The distribution of publications.

The Department of Administration shall submit the initial guidelines to State agencies for review and comment for a period of 60 days; provided, however, that submission to the University of North Carolina General Administration shall satisfy this requirement with respect to universities. The Department, in consultation with at least the State Librarian and the State Auditor, shall consider the comments of the State agencies before adopting final guidelines. The Department of Administration shall adopt and release the final guidelines no later than four months after the release of the initial guidelines.

(b) Upon the adoption and release of final guidelines by the Department of Administration, each State agency and community college shall within four months thereafter adopt a publication procedures manual for public documents consistent with the guidelines established pursuant to subsection (a) of this section and an administrative review and approval process to ensure appropriate review and approval of its public documents.

(c) Each State agency and community college shall submit to the ~~Department of Administration~~ State Library for review and retention a copy of its publication procedures manual and its administrative review procedure for public documents. Any revisions made by an agency

~~shall also be submitted to the State Library within 30 days of adoption by the agency, documents, and any revisions thereto, within 30 days of adoption. The Department shall retain a copy of each agency's submissions. The publication procedures manual, the administrative review procedure, and any revisions shall be implemented upon adoption.~~

~~(d) The Department of Administration may revise its final guidelines after July 1, 1990 in the same manner as provided in this section for the adoption of its initial and final guidelines, provided that the period of agency review and comment shall be thirty (30) days.~~

~~(d1) The State Library may revise the final statewide guidelines, originally issued April 1, 1990, by the Department of Administration, at any time after July 1, 1990, provided that there be distribution of any proposed revisions to all agencies and institutions subject to these provisions, and that there be a 30-day review period for these agencies to comment."~~

Sec. 2. G.S. 143B-90 reads as rewritten:

" § 143B-90. *State Library Commission -- creation, powers and duties.*

There is hereby created the State Library Commission of the Department of Cultural Resources. The State Library Commission has the following functions and duties:

- (1) To advise the Secretary of Cultural Resources on matters relating to the operation and services of the State Library;
- ~~(2) To suggest programs to the Secretary to aid in the development of libraries statewide;~~
- (2a) To work for the financial support of statewide and local public library services;
- (3) ~~To advise the Secretary upon any matter the Secretary might refer to it;~~
- ~~(4) To evaluate and approve the State Plan for Public Library Development;~~
- (4a) To work for the financial support of statewide interlibrary services;
- ~~(5) To evaluate and approve the State Plan for Multitype Library Cooperation;~~
- (5a) To aid and advise the Secretary of Cultural Resources in the development of information services for the promotion of cultural, educational, and economic well-being of the State.
- ~~(6) To evaluate and approve plans for federally funded library programs;~~
- ~~(7) To evaluate and approve State Library policies for the acquisition of library materials; and~~

~~(8) To serve as a search committee to seek out, interview, and recommend to the Secretary one of more experienced and professionally trained librarians for the position of Director of the Division of State Library when a vacancy occurs, and to assist and cooperate with the Secretary in periodic reviews of the performance of the Director and the Division.~~

(8a) To aid and advise the Secretary of Cultural Resources on the recruitment and appointment of the State Librarian."

Sec. 3. G.S. 143B-91 reads as rewritten:

" § 143B-91. State Library Commission -- members; selection; quorum; compensation.

(a) The State Library Commission shall consist of ~~44~~ 15 members. All members shall have an interest in the development of library and information services in North Carolina. Six ~~Eight~~ members shall be appointed by the Governor. ~~Governor and the other five members shall be the following officers of the North Carolina Library Association; President; Chairman of the Public Libraries Section; Chairman of the College and University Section; Chairman of the Junior College Section; and Chairman of the North Carolina Association of School Libraries Section.~~ One member shall be appointed by the Lieutenant Governor. One member shall be appointed by the Speaker of the North Carolina House of Representatives. Three members shall be appointed by the North Carolina Public Library Directors Association. Two members shall be the President and the President-elect of the North Carolina Library Association or two appointees as determined by the North Carolina Library Association's Board of Directors. The State Librarian shall be an ex officio member and act as secretary to the Commission.

Members of the State Library Committee appointed by the Governor shall continue as members of the State Library Commission for the remainder of the terms to which appointed. Thereafter all appointments by the Governor shall be for six-year terms. All appointments shall be for four-year terms with eight of the commissioners taking office on the first four-year cycle and seven commissioners taking office on the second four-year cycle. Any appointment to fill a vacancy in one of the positions appointed by the Governor Governor, Lieutenant Governor, or Speaker of the House of Representatives shall be for the remainder of the unexpired term. Officers of the North Carolina Library Association shall serve as members of the Commission for the duration of their terms as officers of the Association. Appointees shall not serve more than two successive four-year terms.

The Governor shall choose a ~~chairman~~ chairperson from among the ~~members of the Commission, gubernatorial appointees.~~ The ~~chairman~~ chairperson shall serve not more than two successive two-year terms as ~~chairman, chair.~~

Members of the Commission shall receive per diem and necessary travel and subsistence expenses as provided in G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources.

The Commission shall meet at least twice a year.

(b) There shall be standing committees established to advise the Secretary of Cultural Resources, the Commission, and the State Librarian. These committees shall be: Public Library Development; Interlibrary Cooperation; State Government Information Services; State Library Development; and any other committee deemed appropriate. Each committee shall be composed of a committee chairperson and at least six persons appointed annually by the Secretary of Cultural Resources with the approval of the Commission. At least one of the members of each committee shall be a member of the Commission. Each committee shall report to the Commission at least once a year."

Sec. 4. In order to provide for a transition to the new number of commissioners and assure the necessary rotation of members, the following appointment cycle is established:

(a) All members of the State Library Commission at the time of the enactment of this bill shall remain on the Commission for the remainder of their terms except Commissioners who are members through election as President of the North Carolina Library Association and Chair of the following sections of the North Carolina Library Association: Public Library Section, College and University Section, Junior College Section, and President of the North Carolina Association of School Librarians. The terms of these Commissioners shall expire June 30, 1991.

(b) On July 1, 1991, the Governor shall appoint two persons to full four-year terms and two persons to two-year terms. The Lieutenant Governor shall appoint one person to a full four-year term. The Speaker of the House shall appoint one person to a full four-year term. Two appointees of the North Carolina Public Library Directors Association shall begin a two-year term. One appointee of the North Carolina Public Library Directors Association shall begin a full four-year term. The President and Vice-president of the North Carolina Library Association or two appointees of the North Carolina Library Association shall begin a two-year term.

(c) On July 1, 1993, the Governor shall appoint four persons to full four-year terms. Two appointees of the North Carolina Public Library Directors Association shall begin full four-year terms. The President and Vice-president or two appointees of the North Carolina Library Association shall begin full four-year terms.

Sec. 5. G.S. 121-4 is amended by adding a new subdivision to read:

"(16) To enter into an agreement with a private nonprofit corporation for the management of facilities to provide food and beverages at the North Carolina Museum of History. Any net proceeds received by the private nonprofit corporation shall be devoted to the work of the Department. Any private nonprofit corporation entering into an agreement with the Department with regard to the management of the facilities may enter into further agreements with private persons or corporations concerning the operation of the facilities, providing such agreements are arrived at in a public manner, consistent with rules adopted by the Secretary of Administration pursuant to G.S. 143-53, and allowing for the submission of proposals or bids by all interested parties regardless of nationality, religion, race, gender or age. Subject to the provisions of Article 3, Chapter 143 of the General Statutes, the Department may enter into an agreement in regard to obtaining or installing equipment, furniture and furnishings for such facilities. The operation of food and beverage service shall be subject to the provisions of Article 3 of Chapter 111 of the General Statutes."

Section 6. G.S. 121-7(b) reads as rewritten:

"(b) Insofar as practicable, the North Carolina Museum of History shall accession and maintain records showing provenance, value, location, and other pertinent information on such furniture, furnishings, decorative items, and other objects as have historical or cultural importance and which are owned by or to be acquired by the State for use in the State Capitol, Capitol and the Executive Mansion, and, upon request of the Department of Administration, any other state-owned building. When any such item or object has been entered in the accession records of the Museum of History, the custodian of such item or object shall, upon its removal from the premises upon which it was located or when it is otherwise disposed of, submit to the Museum of History sufficient details concerning its removal or disposition to permit an adequate entry in the accession records to the end that its location or disposition, and authority for such change, shall be showed therein."

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

H.B. 734

CHAPTER 758

AN ACT TO PROVIDE FOR COLLEGIATE INSIGNIA
REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-81.12. Collegiate insignia plates.

(a) The Division shall develop collegiate license plates as provided in this section for public or private colleges or universities located in this State. The Division shall issue a collegiate license plate to the owner of any motor vehicle, except a vehicle registered under the International Registration Plan or a commercial truck, upon application and payment of the appropriate fees.

(b) An owner who desires a collegiate insignia plate shall submit an application for the plate on a form provided by the Division and pay the sum of twenty-five dollars (\$25.00) annually, which shall be in addition to the regular motor vehicle registration fee.

(c) An application for a collegiate insignia license plate may be made at any time during the year. If the application is made for a collegiate insignia license plate to replace an existing current valid plate, the collegiate plate shall be issued with appropriate decals attached. The fee prescribed in subsection (b) of this section shall be paid. No refund shall be made to the applicant for any unused portion remaining on the original plate. When application is made for a collegiate insignia license at the beginning of the applicant's registration period, the normal registration fee must be paid in addition to the fee prescribed in subsection (b) of this section.

(d) Ten dollars (\$10.00) of the additional fee imposed by subsection (b) of this section shall be credited to the Personalized Registration Fund established under G.S. 20-81.3. The remaining revenue derived from the additional fee imposed by subsection (b) of this section shall be credited to the Collegiate Plate Fund, a separate fund established in the State Treasurer's office. The revenue in the Collegiate Plate Fund shall be transferred quarterly to the Board of Governors of The University of North Carolina for public colleges and universities and to the respective board of trustees for private colleges and universities in proportion to the number of collegiate plates sold representing that institution for use for academic enhancement.

(e) The collegiate plate may be imprinted with letters and numerals as determined by the Division. Collegiate plates shall be of a color, design, and material approved by both the Division and the alumni or alumnae association of the appropriate college or university. The words 'North Carolina' shall appear on the plate.

(f) The request for a collegiate insignia license plate may be combined with a request that the plate be a special personalized registration plate authorized by G.S. 20-81.3, upon payment of the fees required in that section.

(g) The Division must receive 300 or more applications for a collegiate license plate for a college or university before a collegiate license plate may be developed for that college or university."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

H.B. 748

CHAPTER 759**AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR THE PRESIDENT PRO TEMPORE OF THE SENATE.**

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the Speaker of the House of Representatives or the President Pro Tempore of the Senate; and

Whereas, the Speaker of the House of Representatives and the President Pro Tempore of the Senate have made recommendations: Now, therefore,

The General Assembly of North Carolina enacts:

PART I. APPOINTMENTS OF THE SPEAKER

Section 1. Thomas E. Terrell, Jr. of Guilford County is appointed to the Board of Trustees of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan for a term to expire on June 30, 1993.

Sec. 2. Betty B. Adams of Wake County and Ivie Clayton of Wake County are appointed to the Board of Trustees of the North Carolina Museum of Art, each for a term to expire on June 30, 1993.

Sec. 3. Mark Donaldson of Chatham County is appointed to the Crime Victims Compensation Commission for a term to expire on June 30, 1995.

Sec. 4. Dr. Jack Levy of New Hanover County and Catherine Cameron of Chatham County are appointed to the North Carolina Hazardous Waste Management Commission, each for a term to expire on June 30, 1993.

Sec. 5. Lynn R. McCaskill of Richmond County and Carolyn Allen of Guilford County are appointed to the North Carolina Low-Level Radioactive Waste Management Authority, each for a term to expire on June 30, 1995.

Sec. 6. Dr. William T. Fletcher of Durham County is appointed to the North Carolina Board of Science and Technology for a term to expire on June 30, 1993.

Sec. 7. Bo Rader of Lee County is appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for a term to expire on June 30, 1993. This is the categorical appointment for an owner or operator of a convenience store that markets petroleum products.

Sec. 7.1. Louis Brandon of Guilford County is appointed to the Governor's Waste Management Board for a term to expire on June 30, 1993.

Sec. 7.2. Representative Ronald Smith of Carteret County and Representative Judy Hunt of Watauga County are appointed to the North Carolina Travel and Tourism Board, each for a term to expire on December 31, 1992. Victoria Sutton of Gaston County is appointed to the North Carolina Travel and Tourism Board for a term to expire on December 31, 1992. This is the categorical appointment for a person associated with tourism attractions in North Carolina.

Sec. 7.3. Section 18 of Chapter 714 of the 1991 Session Laws is amended by deleting the word "Rowan" and substituting the word "Davidson".

Sec. 7.4. Section 20 of Chapter 714 of the 1991 Session Laws is amended by deleting the phrase "C." and substituting the phrase "G.".

PART II. APPOINTMENTS OF PRESIDENT PRO TEMPORE

Sec. 8. Henry Faircloth of Sampson County is appointed to the Real Estate Appraisal Board for a term to expire on June 30, 1994.

Sec. 9. Dorothy Kilpatrick of Henderson County is appointed to the North Carolina Hazardous Waste Management Commission for a term to expire on June 30, 1993.

Sec. 10. Caroline C. Parker of Wayne County is appointed to the Board of Directors of the North Carolina Solid Waste Management Capital Projects Financing Agency for a term to expire on June 30, 1993.

Sec. 11. Don Ward of Wake County is appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for a

term to expire June 30, 1993. This is the categorical appointment for a representative of an organization of petroleum marketers. Angela Waldorf of Wake County is appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for a term to expire on June 30, 1993. This is the categorical appointment for a representative of an organization of refining companies. Thomas C. Mehder of Mecklenburg County is appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for a term to expire on June 30, 1993. This is the categorical appointment for a representative of the environmental insurance industry. James Fain of Wake County is appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for a term to expire on June 30, 1993, as the categorical appointment of a representative of the commercial lending institution industry.

Sec. 12. Judy Seamon of Carteret County is appointed to the North Carolina Center for Nursing Board of Directors for a term to expire on June 30, 1994. This is the categorical appointment for a nurse. Terry Rose of Wake County is appointed to the North Carolina Center for Nursing Board of Directors for a term to expire on June 30, 1994. Betty Woodard of Guilford County is appointed to the North Carolina Center for Nursing Board of Directors for a term to expire on June 30, 1993. Lee Pridgen of Sampson County is appointed to the North Carolina Center for Nursing Board of Directors for a term to expire on June 30, 1992. This is the categorical appointment for a representative of the hospital industry.

Sec. 13. William Jordan Williamson, Jr., of Watauga County is appointed to the North Carolina Travel and Tourism Board for a term to expire on December 31, 1992. This is the categorical appointment for a public member interested in matters relating to travel and tourism. Ralph Peters of Mecklenburg County is appointed to the North Carolina Travel and Tourism Board for a term to expire on December 31, 1992. This is the categorical appointment for a public member associated with the tourism-related transportation industry. Senator Beverly Perdue of Craven County and Senator Howard Lee of Orange County are appointed to the North Carolina Travel and Tourism Board for terms to expire on December 31, 1992.

Sec. 14. Unless otherwise provided, appointments made by this act shall commence upon ratification.

Sec. 15. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

AN ACT TO AUTHORIZE THE ISSUANCE OF NOT IN EXCESS OF FORTY-FIVE MILLION DOLLARS BONDS OF THE STATE TO PROVIDE FUNDS, WITH ANY OTHER AVAILABLE FUNDS, FOR STATE CAPITAL FACILITIES, SUCH AUTHORIZED BONDS TO BE ISSUED WITHOUT AN ELECTION DURING THE BIENNIUM ENDED JUNE 30, 1993, IN AN AMOUNT NOT IN EXCESS OF THIS AUTHORIZED AMOUNT AND NOT IN EXCESS OF TWO-THIRDS OF THE AMOUNT BY WHICH THE STATE'S OUTSTANDING INDEBTEDNESS WILL HAVE BEEN REDUCED DURING THE 1989-91 BIENNIUM.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known and may be cited as the "Capital Facilities Legislative Bond Act of 1991."

Sec. 2. Findings and determinations. It is the intent and purpose of the General Assembly by this act to provide for the issuance of general obligation bonds of the State in order to facilitate the payment of the capital costs required in connection with providing State capital facilities as described in section 6, including capital facilities accomplishing State purposes to be provided through grants as herein provided.

Sec. 3. Definitions. As used in this act, unless the context otherwise requires:

- (1) "Bonds" means the bonds issued under this act.
- (2) "Cost" means, without intending thereby to limit or restrict any proper definition of such word in financing the cost of State capital facilities as authorized by this act.
 - a. The cost of constructing, reconstructing, renovating, repairing, enlarging, acquiring and improving capital facilities, and acquiring equipment and land therefor.
 - b. The cost of engineering, architectural, and other consulting services as may be required.
 - c. Administrative expenses and charges.
 - d. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap agreements, financial and legal consultants and related costs of bond and note issuance, to the extent and as determined by the State Treasurer, and
 - e. Any other costs and expenses necessary or incidental to the purposes of this act.

- (3) "Credit facility" means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.
- (4) "Notes" means the notes issued under this act.
- (5) "Par formula" means any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:
 - a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible.
 - b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time, or
 - c. Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.

Sec. 4. Authorization of bonds and notes. The State Treasurer is hereby authorized, by and with the consent of the Council of State as herein provided, to issue and sell at one time or from time to time in the biennium ending June 30, 1993, general obligation bonds of the State to be designated "State of North Carolina Capital Improvement Bonds, Series 199," or notes of the State as herein provided, in an aggregate principal amount not to exceed forty-five million dollars (\$45,000,000), this amount being not in excess of two-thirds of the amount by which the State's outstanding indebtedness was reduced during the biennium ended June 30, 1991, for the purpose of

providing funds, with any other available funds, for the uses authorized in this act.

If the forty-five million dollars (\$45,000,000) maximum principal amount of bonds and notes herein authorized shall be in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the biennium ended June 30, 1991, and the amount of bonds and notes issued hereunder shall on that account be less than forty-five million dollars (\$45,000,000), the difference between the proceeds of the bonds and notes and the forty-five million dollars (\$45,000,000) aggregate bond proceeds set forth above may be made up from other available sources or the costs of the authorized uses may be reduced.

Sec. 5. Uses of bond and note proceeds. The proceeds of bonds and notes shall be used for financing the cost of State capital facilities as herein provided, including, without limitation, the cost of constructing capital facilities, renovating, repairing or reconstructing existing buildings, utilities, and other capital facilities, acquiring equipment related thereto, purchasing land, making grants as herein provided, paying costs of issuance of bonds and notes and paying contractual services necessary for the completion of the purposes of this act.

Except as herein otherwise provided, the proceeds of bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated the "State Capital Facilities Legislative Bond Fund of 1991" and shall be disbursed as herein provided.

Any additional moneys which may be received by grant from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any capital facilities authorized by this act may be placed by the State Treasurer in the State Capital Facilities Legislative Bond Fund of 1991 or in a separate fund and shall be disbursed, to the extent permitted by the terms of the grant, without regard to any limitations imposed by this act.

The proceeds of bonds and notes may be used with any other moneys made available by the General Assembly for the cost of State capital facilities, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act shall be disbursed for the purposes provided in this act upon warrants drawn

on the State Treasurer by the State Comptroller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

The Office of State Budget and Management shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriation Committees, and the Fiscal Research Division on the expenditure of moneys from the State Capital Facilities Legislative Bond Fund of 1991. The reports shall continue until the completion of the projects provided for in the State Capital Facilities Legislative Bond Fund of 1991.

Sec. 6. Allocation of proceeds. The proceeds of bonds and notes shall be allocated and expended for paying the cost of State capital facilities and making grants to the extent and as provided in this act and subject to change as herein provided, as follows:

<u>Department and Project</u>	<u>Projected Allocation</u>
Department of Administration	
1. New Central Heat Plant (restores 1990-91 funds)	\$ 6,594,500
2. Mall Improvements - Sidewalk Completion and Landscaping	675,000
Department of Human Resources	
1. Murdoch Center-Parkview Cottage Renovation (restores 1990-91 funds)	1,400,000
2. John Umstead - Alum Sludge Treatment Facility	1,100,000
3. Black Mountain Center - Renovations (restores previously appropriated funds)	1,300,000
4. Secretary's Office - Headstart Bonds Account (Grant equivalent to one modular classroom or renovations to existing facilities.)	1,600,000
Department of Crime Control and Public Safety	

CHAPTER 760

Session Laws — 1991

1. Replace Underground Storage Tanks to comply with EPA requirements (National Guard)		92,000
2. Goldsboro Armory -	Total Requirements	2,800,800
(restores 90-91	Federal Funds	2,057,300
funds)	Local Funds	371,750
	State Appropriation	371,750
3. Clinton Armory -	Total Requirements	2,608,500
(restores 90-91	Federal Funds	1,884,200
funds)	Local Funds	362,150
	State Appropriation	362,150
Department of Environment, Health, and Natural Resources		
1. Water Resources Development Projects		2,055,000
2. Park Repair and Maintenance Projects	2,000,000	
Office of State Budget		
1. Reserve for Repairs and Renovations		8,299,600
University of North Carolina Board of Governors		
1. Reserve for Repairs/Renovations		14,300,000
General Assembly		
1. Buildings/Office Repairs, Renovations, Equipment, and Furnishings		4,600,000
Department of Cultural Resources		
1. Fort Fisher/Highway 421 Erosion Control Matching Funds		<u>250,000</u>
GRAND TOTAL		\$ 45,000,000

Allocations made pursuant to this section to the Department of Crime Control and Public Safety for the Armory at Goldsboro and the Armory at Clinton are contingent upon federal matching funds being

available. If federal matching funds do not become available by July 1, 1992, such allocations shall be transferred to the Office of State Budget and placed in the Reserve for Repairs and Renovations.

It is one of the purposes of this act to provide support, by the issuance of bonds to make grants, together with support to be provided by the federal government as herein mentioned, in order to facilitate the payment of certain capital costs required in providing new and improving existing facilities to be used by entities providing services under the "Headstart" program, a program delivering comprehensive health, educational, nutritional, social and other services to economically disadvantaged children, primarily children who have not reached the age of compulsory school attendance. The proceeds of bonds and notes issued to make Headstart grants shall be used for the purpose of providing a grant by the State, together with other available funds, to local private nonprofit corporations and public agencies administering Headstart programs for the payment of the cost of acquiring, constructing, reconstructing, renovating, equipping and improving classroom facilities for the existing Headstart programs, including, without limitation, the acquisition of land. The contribution to be made by the State shall be made only to nonprofit corporations and public agencies receiving monies from the federal government under the federal Headstart program. The contribution by the State shall be made pursuant to agreements between the State by the Department of Human Resources and the nonprofit corporations or pursuant to rules and regulations of the Department of Human Resources having application to public agencies. The agreements and the rules and regulations shall contain provisions necessary to assure that the proceeds of the bonds and notes are applied for the accomplishment of public purposes only, within the meaning of Article V, Section 2(7) of the North Carolina Constitution, including, without limitation, provisions to assure that facilities provided or improved shall be used in connection with the Headstart program and further shall contain provisions to assure compliance with G.S. 143-6.1. In entering into agreements with nonprofit corporations or promulgating rules and regulations having application to public agencies, the Department of Human Resources shall incorporate requirements including the following:

- (1) Title to real property shall vest in the nonprofit corporations, the public agency, the county wherein the facilities are located, or in another public agency.
- (2) If State funds are to be used in connection with the construction of facilities to be owned by a nonprofit corporation, the nonprofit corporation must comply with the applicable provision of Article 8 of Chapter 143 of the

General Statutes of North Carolina concerning public bidding for construction and acquisition of equipment.

- (3) State funds shall be provided at the sole discretion of the Secretary of the Department of Human Resources following a review of applications. The applications are to document the need for additional classroom space or equipment to meet Headstart needs. The documentation shall state why funds are needed; shall identify companion sources of funding; contain the endorsement of the county in which the proposed project is or will be located; identify the specific activities to be achieved including a schedule of events; and contain a description of the anticipated impact in the community.
- (4) Each of the 44 existing Headstart programs in the State shall receive no more than \$36,364 from the proceeds of bonds and notes issued for Headstart purposes.

The General Assembly may change from time to time any of the foregoing requirements. The proceeds of bonds and notes issued for Headstart purposes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special account to be designated "Headstart Bonds Account" to be established in the State Capital Facilities Legislative Bond Fund of 1991. Moneys in the Headstart Bonds Account shall be used for the purposes set forth in this act.

Projected allocations set forth above may be increased to reflect the availability of other funds, including, without limitation, contingency funds, income earned on the investment of bond and note proceeds, and the proceeds of any grants.

The Director of the Budget may, when the Director determines it is in the best interest of the State to do so, and if the cost of a particular project is less than the projected allocation, use the excess funds to increase the size of that project or to increase the size of any other project itemized in this section, except for the Headstart grant program, or to increase the amount allocated to a particular institution within the aggregate amount of funds available under this section including the proceeds of any investment earnings. Prior to taking any action under this subdivision, the Director of the Budget may consult with the Advisory Budget Commission.

The Office of State Budget and Management shall provide quarterly reports to the Chairs of the Appropriations Committee and the Base Budget Committee in the Senate, the Chair of the Appropriations Committee in the House of Representatives, the Joint Legislative Commission on Governmental Operations, and the Fiscal

Research Division as to any changes in projects and allocations made under this section.

Sec. 7. Issuance of bonds and notes.

- (1) Terms and conditions. Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not exceeding 40 years from their date or dates, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.
- (2) Signatures; form and denomination; registration. Bonds or notes may be issued as certificated or uncertificated obligations. If issued as certificated obligations, bonds or notes shall be signed on behalf of the State by the Governor or shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear his facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery and bonds or notes may bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer

may determine in conformity with this act; provided, however, that nothing in this act shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the Registered Public Obligations Act, as well as under this act.

- (3) Manner of sale; expenses. Subject to determination by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States of America and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at such rate or rates of interest, which may vary from time to time, and at such price or prices, including a price less than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.
- (4) Notes; repayment.
 - a. By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money, and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:
 1. For anticipating the sale of bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of the bonds;
 2. For the payment of interest on or any installment of principal of any bonds then outstanding, if there shall not be sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;
 3. For the renewal of any loan evidenced by notes herein authorized;
 4. For the purposes authorized in this act; and
 5. For refunding bonds or notes as herein authorized.
 - b. Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this act. Funds provided by the General Assembly for the payment of interest on or principal of

bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of the bonds.

- (5) Refunding bonds and notes. By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding bonds or notes issued pursuant to this act. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured.
- (6) Tax exemption. Bonds and notes and their transfer (including any profit made on the sale thereof) shall be exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes. The interest on bonds and notes shall not be subject to taxation as to income, nor shall the bonds and notes be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation.
- (7) Investment eligibility. Bonds and notes are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Bonds and notes are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State or any political subdivision is now or may hereafter be authorized by law.
- (8) Faith and credit. The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes.

Sec. 8. Variable interest rates. In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

- (1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;
- (2) Be additionally supported by a credit facility;
- (3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;
- (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and
- (5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

Sec. 9. Interpretation of act.

(a) Additional method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) Statutory references. References in this act to specific sections or Chapters of the General Statutes are intended to be references to such sections as they may be amended from time to time by the General Assembly.

(c) Liberal construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof.

(d) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 9.1. Section 236 of Chapter 689 of the 1991 Session Laws is amended by deleting the following:

"General Assembly

1. Buildings/Office Repairs
and Renovations

4.600.000"

and substituting the following:

"General Assembly

1. Buildings/Office Repairs.
Renovations, Equipment, and
Furnishings

4.600.000".

Sec. 10. Effective date. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

H.B. 929

CHAPTER 761

AN ACT TO MAKE TECHNICAL CORRECTIONS AND OTHER CHANGES TO THE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-567.58(c), as enacted by Section 1 of Chapter 292 of the 1991 Session Laws, reads as rewritten:

"(c) The arbitral tribunal shall decide *ex aequo et bono* (on the basis of fundamental fairness), or as *amiable compositeur* (as an 'amicable ~~pompounder~~'), compounder'), only if the parties have expressly authorized it to do so."

Sec. 2. G.S. 7A-38(h), as enacted by Section 1 of Chapter 207 of the 1991 Session Laws, reads as rewritten:

"(h) Sanctions. Upon failure of a party or attorney to attend a court ordered mediated settlement conference to the extent required by this section and rules promulgated by the Supreme Court, a resident or presiding judge may impose any lawful sanction, including but not limited to the payment of ~~attorneys~~ attorneys' fees, mediator fees, and expenses incurred in attending the conference, contempt, or any other sanction authorized by G.S. 1A-1, Rule 37(b)."

Sec. 3. G.S. 7A-451.1 reads as rewritten:

"§ 7A-451.1. *Counsel fees for outpatient involuntary commitment proceedings.*

The State shall pay counsel fees for persons appointed pursuant to ~~G.S. 122-58.7A-1, G.S. 122C-267(d).~~"

Sec. 4. G.S. 7A-455(d) reads as rewritten:

"(d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian *ad litem*, public defender, or appellate defender who rendered the services or incurred the expenses for which the judgment is to be entered shall obtain the social security number, if any, of each person against whom judgment is to be entered. This number, or a certificate that the person has no social security number, shall be included in each fee application submitted by an assigned attorney, guardian *ad litem*, public defender, or appellate defender, and no order for payment entered upon an application which does not include the required social security number or certification shall be valid to authorize payment to the applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed against any person under this section or under ~~G.S. 450.3~~ G.S. 7A-450.3 shall include the social security number, if any, of the judgment debtor."

Sec. 5. G.S. 20-37.6(e), as amended by Section 4 of Chapter 530 of the 1991 Session Laws, reads as rewritten:

"(e) Enforcement of Handicapped Parking Privileges. -- It shall be unlawful:

- (1) To park or leave standing any vehicle in a space designated with a sign pursuant to subsection (d) of this section for handicapped persons or visually impaired persons when the vehicle does not display the distinguishing license plate, placard, or identification card as provided in this section or a disabled veteran registration plate issued pursuant to ~~G.S. 20-81.4[;]~~ G.S. 20-81.4;
- (2) For any person not qualifying for the rights and privileges extended to handicapped or visually impaired persons under this section to exercise or attempt to exercise such rights or privileges by the unauthorized use of a distinguishing license plate, placard, or identification card issued pursuant to the provisions of this section;
- (3) To park or leave standing any vehicle so as to obstruct a curb ramp or curb cut for handicapped persons as provided for by the North Carolina Building Code or as designated in G.S. 136-44.14;
- (4) For those responsible for designating parking spaces for the handicapped to erect or otherwise use signs not conforming to G.S. 20-37.6(d) for this purpose.

This section is enforceable in all public vehicular areas specified in G.S. 20-4.01(32)."

Sec. 6. G.S. 20-117.1(a), as amended by Section 1 of Chapter 113 of the 1991 Session Laws, reads as rewritten:

"(a) **Rear-Vision Mirrors.** -- Every bus, truck, and truck tractor with a GVWR of 10,001 pounds or more shall be equipped with two rear-vision mirrors, one at each side, firmly attached to the outside of the motor vehicle, and located as to reflect to the driver a view of the highway to the rear and along both sides of the vehicle. Only one outside mirror shall be required, on the driver's side, on trucks which are so constructed that the driver also has a view to the rear by means of an interior mirror. In driveaway-towaway operations, a driven vehicle shall have at least one mirror furnishing a clear view to the rear, and if the interior mirror does not provide the clear view, an additional mirror shall be attached to the left side of the driven vehicle to provide the clear view to the rear."

Sec. 7. G.S. 20-183.2(a), as amended by Section 1 of Chapter 394 of the 1991 Session Laws, reads as rewritten:

"(a) Every motor vehicle, trailer, semitrailer, and pole trailer not including trailers of a gross weight of less than 4,000 pounds and house trailers, registered or required to be registered in North Carolina when operated on the streets and highways of this State must display a current approved State or federal inspection certificate as required by the Federal Motor Carrier Safety Regulations at such place on the vehicle as may be designated by the Commissioner, indicating that it has been inspected in accordance with this Part. Gasoline-powered vehicles over 26,001 pounds shall be subject to emission control device and exhaust emission testing required under G.S. 20-128.2. Such motor vehicle shall thereafter be inspected and display a current inspection certificate as is required by subsection (b) hereof."

Sec. 8. All of the matter set out in G.S. 47D-6 and G.S. 47D-9, as enacted by Section 1 of Chapter 261 of the 1991 Session Laws, is new law.

Sec. 9. G.S. 47D-8(a), as enacted by Section 1 of Chapter 261 of the 1991 Session Laws, reads as rewritten:

"(a) The notice of settlement shall be effective as provided in ~~G.S. 47D-7(a)~~ G.S. 47D-7 from the time of, and for three business days following the day of, filing of the notice of settlement pursuant to this Chapter. If the deed or mortgage delivered pursuant to a settlement for which the notice was filed has not been properly registered in the county where the real property is situated within the three business day period, the notice of settlement shall become absolutely void, and the priority of the grantee or mortgagee under the deed or mortgage registered subsequent to said three business day period shall date from

the time of registration of the deed or mortgage, and not from the time of the filing of the notice of settlement."

Sec. 10. G.S. 58-50-125(e), as enacted by Section 1 of Chapter 630 of the 1991 Session Laws, reads as rewritten:

"(e) No small employer carrier is required to offer coverage or accept applications under subsection (d) of this section:

- (1) From a group already covered under a health benefit plan except for coverage that is to begin after the group's anniversary date, but this subsection shall not be construed to prohibit a group from seeking coverage or a small employer carrier from issuing coverage to a group before its anniversary date; or
- (2) If the Commissioner determines that acceptance of an application or applications would result in the carrier being declared an impaired insurer; or
- (3) To groups of fewer ~~that~~ than five eligible employees where the small employer carrier does not use preexisting-conditions provisions in all health benefit plans it issues to any small employers.

If a small employer carrier who does not use preexisting conditions chooses to market to groups of less than five, then it shall immediately notify the Commissioner and the Board, and it shall do so consistently and equally to all such small employer groups."

Sec. 11. G.S. 58-64-35(a)(2), as rewritten by Section 6 of Chapter 196 of the 1991 Session Laws, reads as rewritten:

"(2) ~~than~~ The remaining seventy-five percent (75%) of escrowed monies can be released when:

- a. (i) the provider has presold a minimum of seventy-five percent (75%) of the independent living units, having received a minimum ten percent (10%) deposit on the presold units, or has maintained an independent living unit occupancy minimum of seventy-five percent (75%) for at least 60 days; (ii) construction or purchase of the independent living unit has been completed and an occupancy permit, if applicable, has been issued by the local government having authority to issue such permits; and (iii) the living unit becomes available for occupancy by the new resident; or
- b. the provider submits a plan of reorganization that is accepted and approved by the Commissioner."

Sec. 12. G.S. 58-64-35(c), as enacted by Section 6 of Chapter 196 of the 1991 Session Laws, reads as rewritten:

"(c) Release of any escrowed funds that may be due to the subscriber or resident shall occur upon: five working ~~days~~ days

notice of death, nonacceptance by the facility, or voluntary cancellation. If voluntary cancellation occurs after construction has begun, the refund may be delayed until a new subscriber is obtained for that specific unit, provided it does not exceed a period of two years."

Sec. 12.1. G.S. 70-48(5), as enacted by Section 2 of Chapter 461 of the 1991 Session Laws, reads as rewritten:

"(5) 'State Archaeologist' means the head of the ~~Office of State Archaeology~~, Archaeology Branch, Archaeology and Historic Preservation Section, Division of Archives and History, Department of Cultural Resources."

Sec. 12.2. G.S. 70-50, as enacted by Section 2 of Chapter 461 of the 1991 Session Laws, reads as rewritten:

"§ 70-50. *Site Steward Program.*

The Department of Cultural Resources may create and maintain a volunteer program for purposes of monitoring the condition of archaeological resources listed in the Record. This program shall be known as the Site Steward Program and will be administered through the ~~Office of State Archaeology~~ Department in cooperation with local and statewide archaeological societies and groups."

Sec. 12.3. The second paragraph of G.S. 20-279.21(b)(4), as amended by Chapter 646 of the 1991 Session Laws, reads as rewritten:

"In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; ~~instances where more than one policy may apply, the benefit of all limits of liability of underinsured motorist covered under all such policies;~~ provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added

to the limits applicable to any other motor vehicle under that policy."

Sec. 12.4. G.S. 90-357(a)(4)e., as enacted by House Bill 881, 1991 Session, reads as rewritten:

"e. Is a member of a recognized denomination or faith group that recognizes the applicant's status as a rabbi, priest, minister, or religious ~~leader~~; leader, as defined in the Federal Internal Revenue ~~Code~~, Code;"

Sec. 13. G.S. 87-21(e), as amended by Section 1 of Chapter 355 of the 1991 Session Laws, reads as rewritten:

"(e) Posting License; License Number on Contracts, etc. -- The current license issued in accordance with the provisions of this Article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities. The initial qualified licensee on a license is the permanent possessor of the license number under which that license is issued, except that a licensee, or the licensee's legal agent, personal representative, heirs or assigns, may designate in writing to the Board a qualified licensee to whom the Board shall assign the license number upon the payment of a ten ~~dollars~~ dollar (\$10.00) assignment fee. Upon such assignment, the qualified licensee becomes the permanent possessor of the assigned license number. Notwithstanding the foregoing, the license number may be assigned only to a qualified licensee who has been employed by the initial licensee's plumbing and heating company for at least 10 years or is a lineal relative, sibling, first cousin, nephew, niece, daughter-in-law, son-in-law, brother-in-law, or sister-in-law of the initial licensee. Each successive licensee to whom a license number is assigned under this subsection may assign the license number in the same manner as provided in this subsection."

Sec. 14. G.S. 90-270.15(a), as amended by Section 1 of Chapter 239 of the 1991 Session Laws, reads as rewritten:

"(a) Any applicant for licensure and any person licensed under this Article shall have behaved in conformity with the ethical and professional standards specified in this section and in the rules and regulations of the Board. The Board may deny, suspend, revoke, discipline, place on probation, limit, or require remediation or rehabilitation, all as provided for in subsection (f) below, upon proof that the applicant or the person to whom the ~~licenses~~ license was issued:

- (1) Has been convicted of a felony or entered a plea of guilty or *nolo contendere* to any felony charge;
- (2) Has been convicted of or entered a plea of guilty or *nolo contendere* to any misdemeanor involving moral turpitude,

- misrepresentation or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice psychology, or a misdemeanor charge reflecting the inability to practice psychology with due regard to the health and safety of clients or patients;
- (3) Has engaged in fraud or deceit in securing or attempting to secure a license under this Article or the renewal thereof or has willfully concealed from the Board material information in connection with application for or renewal of a license under this Article;
 - (4) Repealed by Session Laws 1991, c. 239, s. 1.
 - (4a) Has demonstrated an inability to practice psychology with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition;
 - (5) Has practiced any fraud, deceit, or misrepresentation upon the public, the Board, or upon any individual in connection with the practice of psychology, the offer of psychological services, the filing of Medicare, Medicaid, or other claims to any third party payor, or in any manner otherwise relevant to fitness for the practice of psychology;
 - (6) Has made fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, professional credentials, or related to qualifications or fitness for the practice of psychology to the public, any individual, the Board, or any other organization;
 - (7) Has had a license or certification for the practice of psychology in any other state, or territory of the United States, or any other country, suspended or revoked, or has been disciplined by any other state or territorial licensing or certification board for conduct which would subject him to discipline under this Article;
 - (8) Has been guilty of immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection, in subsection (a1) below, or in the then-current code of ethics of the American Psychological Association, except as the provisions of such code of ethics may be inconsistent and in conflict with the provisions of this Article, in which case, the provisions of this Article control;

- (9) Has violated any provision of this Article or of the duly adopted rules and regulations of the Board; or
- (10) Repealed by Session Laws 1991 c. 239, s. 1.
- (10a) Has aided or abetted the unlawful practice of psychology by any person not licensed by the Board."

Sec. 15. G.S. 90-270.15(a1), as amended by Section 1 of Chapter 239 of the 1991 Session Laws, reads as rewritten:

"(a1) The Board may deny licensure, and discipline or require remediation and rehabilitation, or any combination thereof, as specified in subsections (a) above and (e) below, upon proof of immoral, dishonorable, unprofessional, or unethical conduct. Immoral, dishonorable, unprofessional, or unethical ~~conduct~~, conduct has occurred whenever any person who has applied for or has been issued a license under this Article has engaged in any of the following acts or offenses:

- (1) Practiced psychology in such a manner as to endanger the welfare of clients or patients;
- (2) Harassed or abused, sexually or otherwise, a client, patient, student, supervisee, or trainee;
- (3) Exercised undue influence in such a manner as to exploit the client, patient, student, supervisee, or trainee for the financial or other personal advantage or gratification of the psychologist or a third party;
- (4) Refused to appear before the Board after having been ordered to do so in writing by the Chair;
- (5) Failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional psychological associations, hospitals, or other health care organizations or educational institutions when those organizations or entities have jurisdiction; or failed to cooperate with institutional review boards or professional standards review organizations, when those organizations or entities have ~~jurisdiction~~, jurisdiction;
- (6) Failed to maintain a clear and accurate case record which documents the following for each patient or client:
 - a. Presenting problems, diagnosis, or purpose of the evaluation, counseling, treatment, or other services provided;
 - b. Fees, dates of services, and itemized charges;
 - c. Summary content of each session of evaluation, counseling, treatment, or other services, except that summary content need not include specific information

that may cause significant harm to any person if the information were released;

- d. Test results or other findings, including basic test data; and
 - e. Copies of all reports prepared;
- (7) Failed to competently use, administer, score, or interpret psychological assessment techniques, including interviewing and observation, or provided findings or recommendations which do not accurately reflect the assessment data, or exceed what can reasonably be inferred, predicted, or determined from test, interview, or observational data;
 - (8) Failed to provide competent diagnosis, counseling, treatment, consultation, or supervision, in keeping with standards of usual and customary practice in this State;
 - (9) In the absence of established standards, failed to take all reasonable steps to ensure the competence of services;
 - (10) Failed to cooperate with other psychologists or other professionals to the potential or actual detriment of clients, patients, or other recipients of service, or behaved in ways which substantially impede or impair other psychologists' or other professionals' abilities to perform professional duties; or
 - (11) Practiced psychology or conducted research outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience."

Sec. 16. G.S. 90-270.15(g), as amended by Section 1 of Chapter 239 of the 1991 Session Laws, reads as rewritten:

"(g) When considering the issue of whether or not an applicant or licensee is physically or mentally capable of practicing psychology with reasonable skill and safety to patients or clients, then, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing psychology with reasonable skill and safety to patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee in question to submit to a psychological examination by a psychologist to determine psychological status or a physical examination by a physician to determine physical condition, or both. Such psychologist or physician, shall be designated by the court. The expenses of such examinations shall be borne by the Board. Where the applicant or licensee raises the issue of mental or physical competence or appeals a decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant's or licensee's expenses. If the Board suspects the

objectivity or adequacy of the examination, the Board may compel an examination by its designated practitioners at its own expense."

Sec. 17. G.S. 95-138(a), as amended by Section 1 of Chapter 329 of the 1991 Session Laws, reads as rewritten:

"(a) Any employer who willfully or repeatedly violates the requirements of this Article, any standard, rule or order promulgated pursuant to this Article, or regulations prescribed pursuant to this Article, may upon the recommendation of the Director to the Commissioner be assessed by the Commissioner a civil penalty of not more than seventy thousand dollars (\$70,000) and not less than five thousand dollars (\$5,000) for each willful violation. Any employer who has received a citation for a serious violation of the requirements of this Article or any standard, rule, or order promulgated under this Article or of any regulation prescribed pursuant to this Article, shall be assessed by the Commissioner a civil penalty of up to seven thousand dollars (\$7,000) for each such violation. If the violation is adjudged not to be of a serious nature, then the employer may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each such violation. Any employer who fails to correct a violation for which a citation has been issued under this Article within the period allowed for its correction (which period shall not begin to run until the date of the final order of the Board in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay or avoidance of penalties), may be assessed a civil penalty of not more than seven thousand dollars (\$7,000). Such assessment shall be made to apply to each day during which such failure or violation continues. Any employer who violates any of the posting requirements, as prescribed under the provision of this Article, shall be assessed a civil penalty of not more than seven thousand dollars (\$7,000) for such violation. The Commissioner upon recommendation of the Director, or the Board in case of an appeal, shall have authority to assess all civil penalties provided by this Article, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer and the record of previous violations."

Sec. 18. G.S. 105-102.6(c), as enacted by Section 2 of Chapter 539 of the 1991 Session Laws, reads as rewritten:

"(c) Minimum Recycled Content Percentage. The recycled content percentage of every person engaged in the business of publishing or printing publications printed on newsprint consumed by a producer shall equal or exceed the following minimum recycled content percentages percentages:

During 1991 and 1992, twelve percent (12%).

During 1993, fifteen percent (15%).
 During 1994, twenty percent (20%).
 During 1995, twenty-five percent (25%).
 During 1996, thirty percent (30%).
 During 1997, thirty-five percent (35%).
 After 1997, forty percent (40%)."

Sec. 19. G.S. 105-445, as amended by Sections 16, 18, and 20 of Chapter 538 of the 1991 Session Laws, reads as rewritten:

"§ 105-445. *Application of proceeds of gasoline tax.*

Of the revenue collected under this Article, seventy-five percent (75%) shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to ~~the~~ the Highway Fund and the Highway Trust Fund. The Secretary shall credit revenue or charge refunds to the appropriate Funds on a monthly basis."

Sec. 20. G.S. 113A-226(a), as enacted by Section 1 of Chapter 132 of the 1991 Session Laws, reads as rewritten:

"(a) Any person who violates this Article or any rule adopted pursuant to this Article shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty dollars (\$50.00) ~~or~~ nor more than one thousand dollars (\$1,000), or imprisoned for not ~~less~~ than 10 days nor more than 180 days, or both, for each offense."

Sec. 21. G.S. 115D-71, as amended by Section 3 of Chapter 184 of the 1991 Session Laws, reads as rewritten:

"§ 115D-71. *Persons eligible to attend the Center; subjects taught.*

Persons eligible ~~for~~ to attend the Center shall be at least 16 years of age and legal residents of the State of North Carolina, as set forth in G.S. 116-143.1: Provided, that out-of-state students, not to exceed ten percent (10%) of the total enrollment, may be enrolled when vacancies exist, upon payment of tuition. The amount of tuition shall be determined by the board of trustees. The money thus collected shall be deposited in the State treasury. The Center shall (i) assist individual citizens of North Carolina in becoming contributing members of a well-qualified work force and (ii) assist in identification of problems confronting the textile industry and in solving these problems through education, training, and technology transfer in partnership with the North Carolina Community College System."

Sec. 21.1. Article 6A.1 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-30.9I. *Alternate submission authority.*

Notwithstanding any other provision of this Article, in the event that the person or party responsible under G.S. 120-30.9E, 120-30.9F, or 120-30.9G for submitting any local act of the General Assembly shall

delay, obstruct, or refuse to make a submittal to the Attorney General of the United States, the Attorney General of North Carolina may submit that local act. Any person or party responsible under this Article for making such a submission shall promptly provide any information and materials the Attorney General of North Carolina might request to facilitate making the submission and making any supplements to the submission."

Sec. 22. G.S. 130-295.02, as enacted by Chapter 450 of the 1991 Session Laws, is recodified as G.S. 130A-295.03.

Sec. 23. G.S. 131E-2, as enacted by Section 1 of Chapter 143 of the 1991 Session Laws, reads as rewritten:

"§ 131E-2. Contested case hearing petition time limit.

Except as otherwise provided in this Chapter, a petition for a contested case that is authorized by this Chapter shall be filed in the Office of Administrative Hearings within 30 days after the Department mails written notice of an agency decision to the person filing the petition. This section shall not be construed to create any right to file a petition for a contested case that is not otherwise granted in this Chapter."

Sec. 24. G.S. 131E-103(b), as amended by Section 2 of Chapter 143 of the 1991 Session Laws, reads as rewritten:

"(b) The provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a). A petition for a contested case shall be filed within 20 days after the Department mails the licensee a notice of its decision to deny a renewal application, or to recall, suspend, or revoke an existing license."

Sec. 25. G.S. 131E-109(c), as amended by Section 3 of Chapter 143 of the 1991 Session Laws, reads as rewritten:

"(c) The Secretary or a designee may suspend the admission of any new patients or residents at any nursing home or domiciliary home where the conditions of the nursing home or domiciliary home are detrimental to the health or safety of the patient or resident. This suspension shall remain in effect until the Secretary is satisfied that conditions or circumstances merit the removal of the suspension. This subsection shall be in addition to authority to suspend or revoke the license of the home. Any facility wishing to contest a suspension of admissions shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. The petition for a contested case shall be filed in the Office of Administrative Hearings within 20 days after the Department mails a written notice of suspension of admissions to the facility."

Sec. 26. G.S. 131E-111(b), as amended by Section 1 of Chapter 185 of the 1991 Session Laws, reads as rewritten:

"(b) A nurse aide who wishes to contest a finding of resident neglect, resident abuse, or misappropriation of resident property made against the aide, is entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the nurse aide receives written notice by certified mail of the Department's intent to place findings against the aide in the nurse aide registry."

Sec. 27 (a) G.S. 143-215.108(c), as designated by Section 5 of Chapter 552 of the 1991 Session Laws, shall instead be G.S. 143-215.108(d) as designated by Section 1 of Chapter 629 of the 1991 Session Laws.

(b) G.S. 143-215.108(d), as enacted by Section 5 of Chapter 552 of the 1991 Session Laws, is recodified as G.S. 143-215.108(d1).

(c) G.S. 143-215.108(f), as designated by Section 5 of Chapter 552 of the 1991 Session Laws, shall instead be G.S. 143-215.108(g) as designated by Section 1 of Chapter 629.

Sec. 28. G.S. 143B-153(3), as amended by Section 1 of Chapter 462 of the 1991 Session Laws, reads as rewritten:

"(3) The Social Services Commission shall have the power and duty to establish and adopt standards:

- a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;
- b. For the inspection and licensing of domiciliary homes for aged or disabled persons as provided by G.S. 131D-2(b) and for personnel requirements of staff employed in domiciliary homes. Any proposed personnel requirements that would impose additional costs on owners of domiciliary homes shall be reviewed by the Joint Legislative Commission on Governmental Operations before they are ~~adopted~~, adopted;
- c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;
- d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;
- e. Repealed by Session Laws 1981, c. 562, s. 7.
- f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina."

Sec. 29. G.S. 159-27.1, as enacted by Section 3 of Chapter 508 of the 1991 Session Laws, is recodified as G.S. 159-27.1.

Sec. 30. G.S. 160A-35(b), as enacted by Section 1 of Chapter 25 of the 1991 Session Laws, is recodified as G.S. 160A-35.1, with a catch line to read: "Limitation on change in financial participation prior to annexation." G.S. 160A-35(a) is redesignated as G.S. 160A-35.

Sec. 31. G.S. 160A-47(b), as enacted by Section 1 of Chapter 25 of the 1991 Session Laws, is recodified as G.S. 160A-47.1, with a catch line to read: "Limitation on change in financial participation prior to annexation." G.S. 160A-47(a) is redesignated as G.S. 160A-47.

Sec. 32. G.S. 163-140(b)(4)a. and b. as rewritten by Section 2 of Chapter 641, Session Laws of 1991, reads as rewritten:

- "a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
~~for whom you wish to vote.~~
- b. You may vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote."

Sec. 32.1. G.S. 163-140(b)(5)a. and b. as rewritten by Section 3 of Chapter 641, Session Laws of 1991, reads as rewritten:

- "a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
~~for whom you wish to vote~~
- b. You may vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote."

Sec. 33. (a) The description of District 8 in G.S. 163-201 as rewritten by Chapter 601, Session Laws of 1991, is amended by deleting "Radford # 5" and substituting "Raeford # 5".

(b) G.S. 163-201(c)(6), as enacted by Chapter 601, Session Laws of 1991, reads as rewritten:

- "(6) ~~Any listing in any district of Mecklenburg Precinct XMC2 Noncontiguous shall be disregarded, as that precinct does not exist~~ In Mecklenburg County, Precinct XMC2 Noncontiguous is Tract 55.01, Block 303C, and is districted with Precinct MC1 notwithstanding any description above:".

Sec. 34. The first line of Section 1 of Chapter 59 of the 1991 Session Laws is amended by adding the phrase "Part C of Article 6 of" before the phrase "Chapter 131E".

Sec. 35. Section 2 of Chapter 142 of the 1991 Session Laws reads as rewritten:

"Sec. 2. This act becomes effective October 1, 1991, and applies to ~~require~~ required reevaluations for children who have not reached the second semester of the third grade by this date."

Sec. 36. Section 1 of Chapter 204 of the 1991 Session Laws is amended by inserting the word "and" at the end of subdivision (6).

Sec. 37. Effective on the effective date of Section 3 of Chapter 672, Session Laws of 1991, Subsection (a) of Section 222 of Chapter 689 of the 1991 Session Laws, The Appropriations and Budget Revenue Act of 1991 reads as rewritten:

"(a) Before any other transfers are made pursuant to ~~G.S. 20-81.3(c) or 20-81.3(g)~~, G.S. 20-79.7, the Secretary of Transportation shall allocate from the ~~Personalized~~ Special Registration Plate Fund \$150,000 for the 1991-92 fiscal year and \$150,000 for the 1992-93 fiscal year for personnel to staff Visitor and Welcome Centers as follows:

- (1) \$50,000 for the 1991-92 fiscal year and \$50,000 for the 1992-93 fiscal year to the Albemarle Regional Planning and Development Office in the Town of Hertford for the Visitor and Welcome Center on U.S. Highway 17 in Camden County;
- (2) \$50,000 for the 1991-92 fiscal year and \$50,000 for the 1992-93 fiscal year to the Southeastern Welcome Center, Inc., for the Visitor and Welcome Center on U.S. Highway 17 South in Brunswick County;
- (3) \$25,000 for the 1991-92 fiscal year and \$25,000 for the 1992-93 fiscal year to Smoky Mountain Hosts of North Carolina, Inc., for the Visitor and Welcome Center on U.S. Highway 441 in Macon County; and
- (4) \$25,000 for the 1991-92 fiscal year and \$25,000 for the 1992-93 fiscal year to the North Carolina High Country Host, Inc., for personnel to staff the Visitor and Welcome Center in the Town of Boone, Watauga County."

Sec. 37.1. In order to account for revenues raised by Chapter 623, Session Laws of 1991, there is appropriated from the nonreverting account for Water Pollution Control Operators Certification established in G.S. 90A-42 to the Department of Environment, Health, and Natural Resources the sum of \$400,000 for the 1991-92 fiscal year and the sum of \$400,000 for the 1992-93 fiscal year for administering the Water Pollution Control System

Operators Certification Program: provided, however, if the revenues raised from Chapter 623 of the 1991 Session Laws are less than \$400,000 for the 1991-92 fiscal year or are less than \$400,000 for the 1992-93 fiscal year, then the appropriation is reduced accordingly.

Sec. 37.2. As the same law was enacted by Section 2 of Chapter 656, Session Laws of 1991, Section 179 of Chapter 689 of the 1991 Session Laws, The Appropriations and Budget Revenue Act of 1991 is repealed.

Sec. 37.3. Article 1 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-14. Department may assist private nonprofit foundations.

(a) The Secretary may allow employees of the Department to assist any private nonprofit foundation that works directly with services or programs of the Department and whose sole purpose is to support the services and programs of the Department, and may provide other appropriate services to any such foundation. No employee of the Department may work with a foundation for more than 20 hours in any one month. Chapter 150B of the General Statutes does not apply to any assistance of services provided to a private nonprofit foundation pursuant to this section.

(b) The board of directors of any private nonprofit foundation that receives assistance or services pursuant to this section shall secure and pay for the services of the Department of State Auditor or shall employ a certified public accountant to conduct an annual audit of the financial accounts of the foundation. The board of directors of the foundation shall transmit a copy of the annual financial audit report to the Secretary."

Sec. 37.4. To conform to the repeal of G.S. 20-50.2 by Chapter 624, Session Laws of 1991, effective January 1, 1993, G.S. 105-314 is repealed.

Sec. 37.5. G.S. 36A-53(b) as amended by Chapter 747, Session Laws of 1991, is amended by deleting "1954" and substituting "1986."

Sec. 38. Section 2 of Chapter 317 of the 1991 Session Laws is amended by deleting the phrase "is rewritten to read:" and substituting the phrase "reads as rewritten:".

Sec. 39. Section 3 of Chapter 317 of the 1991 Session Laws is amended by deleting the phrase "is rewritten to read:" and substituting the phrase "reads as rewritten:".

Sec. 40. Section 3 of Chapter 403 of the 1991 Session Laws is amended by deleting "(g)" and substituting "(g)".

Sec. 41. Subdivision (2) of Section 5 of Chapter 404 of the 1991 Session Laws reads as rewritten:

"(2) The selection and assignment of personnel filling certified positions shall be made by a ~~simply simple~~ majority vote of the Interim and Merged Boards. Any involuntary reassignment across previous administrative unit boundaries of persons filling certified positions by the Permanent Board shall be made only by a two-thirds affirmative vote during the first five years following the effective date of merger."

Sec. 42. Section 2 of Chapter 419 of the 1991 Session Laws is amended by deleting the underlining beneath the word "insurance".

Sec. 43. Section 2(2) of Chapter 434 of the 1969 Session Laws, as amended by Chapter 498 of the 1983 Session Laws, as amended by Chapter 497 of the 1991 Session Laws, is further amended by inserting the word "the" between the words "maintain in" and "Local".

Sec. 44. The first sentence of Section 2 of Chapter 503 of the 1991 Session Laws is amended by inserting the word "following" between the words "the" and "provisions".

Sec. 45. Section 6 of Chapter 506 of the 1991 Session Laws is amended by deleting the phrase "reads as written:" and substituting the phrase "reads as rewritten:".

Sec. 46. Section 4.2 of the Charter of the City of Foscoe, as enacted by Section 1 of Chapter 553 of the 1991 Session Laws, is amended by deleting the word "or" and substituting the word "on" between the words "par" and "face".

Sec. 47.1. Effective July 1, 1991, Section 201.1(a) of Chapter 689 of the 1991 Session Laws reads as rewritten:

"(a) The State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of less than 3,000 students and (ii) to each county school administrative unit with an average daily membership of from 3,000 to 4,000 students if the county in which the local school administrative unit is located has a county adjusted property tax base per student that is below the State adjusted property tax base per ~~student~~, student and if the total average daily membership of all local school administrative units located within the county is from 3,000 to 4,000 students. The allocation formula shall:

- (1) Round all fractions of positions to the next whole position;
- (2) Provide four additional regular classroom teachers;
- (3) Provide additional program enhancement teachers adequate to offer the standard course of study;
- (4) Change the duty-free period allocation to one teacher assistant per 400 average daily membership;

- (5) Provide a base for the consolidated funds allotment of at least \$150,000, excluding textbooks; and
- (6) Allot vocational education funds for grade 6 as well as for grades 7-12.

If funds appropriated for each fiscal year for small school system supplemental funding are not adequate to fund fully the program, the State Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis. This formula is solely a basis for distribution of supplemental funding for certain county school administrative units and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for such county administrative units."

Sec. 47.2. Effective July 1, 1991, Section 201.1(c)(1) of Chapter 689 of the 1991 Session Laws reads as rewritten:

"(1) 'Average daily membership' means ~~the final average daily membership in the most recent year for which county current expense appropriations and adjusted property tax valuations are available,~~ average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education."

Sec. 47.3. Effective July 1, 1991, Section 201.2(d)(1) of Chapter 689 of the 1991 Session Laws reads as rewritten:

"(1) 'Average daily membership' means ~~the final average daily membership in the most recent year for which county current expense appropriations and adjusted property tax valuations are available,~~ average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education."

Sec. 48. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended by Chapter 694 of the 1981 Session Laws, as amended by Chapter 617 of the 1991 Session Laws, is amended by deleting the word "the" before the phrase "Chapter 143" in the second sentence of Section 17(3).

Sec. 49. Section 2 of Chapter 636 of the 1991 Session Laws is amended by deleting the phrases "subdivision (4)" and "subdivision (5)" and substituting "Section 4" and "Section 5" respectively.

Sec. 50. Transfer Legal Position and Legal Support Staff Position to Department of Insurance.

The following positions are transferred to the Department of Insurance from the Department of Justice: one agency legal specialist position (#0126) and one paralegal II position (#0133). The equipment, supplies, records, and other property to support these

positions are also transferred to the Department of Insurance from the Department of Justice.

Sec. 50.1. The Department of Revenue shall include in its report to the Information Technology Commission required under Section 190.2(9) of Chapter 689 of the 1991 Session Laws, The Appropriations and Budget Revenue Act of 1991, any mechanical, electrical, telecommunications, partition, and interior and furnishings revisions to the new revenue building prior to its completion that the Department recommends as necessary for the collection of State revenues at optimum levels.

The Commission shall make a recommendation to the Office of State Budget and Management on whether funds should be expended to support the revisions recommended by the Department. The Commission's recommendation shall be based on a finding of whether the revisions are necessary to enable the Department to carry out its statutory duty to collect State revenues in the most efficient and effective manner possible.

Upon receipt of a recommendation from the Commission that funds are necessary to support the revisions, the Office of State Budget and Management may transfer not more than \$1,600,000 for the 1991-92 fiscal year to carry out the revisions. In making the transfer, the Office of State Budget and Management may use only those funds from the Reserve for Repairs and Renovations in the Office of State Budget and Management. Before any funds may be expended for this purpose, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations on the proposed revisions and expenditures.

Sec. 50.2. Effective July 1, 1991, subsection (f) of Section 91 of Chapter 689 of the 1991 Session Laws, The Appropriations and Budget Revenue Act of 1991, is amended by rewriting the position to be transferred from the Office of the Secretary of Human Resources as Position Number "0712", Position Title "Agency Legal Specialist III", Salary Grade "77", and by redesignating the position number for the position being transferred from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to "0225".

Sec. 50.3. (a) As used in this section, the terms "commercial", "hazardous waste facility", and "unit of local government" have the same meaning as in G.S. 130A-290.

(b) The Governor's Waste Management Board shall examine the burdens placed on units of local government that result from the proposed siting of a commercial hazardous waste management facility. The Board shall determine the nature and extent of such burdens on units of local government that volunteer to host a facility and on units of local government that oppose the siting of a facility. The Board

shall assess the resources available to units of local governments to address such burdens and the off-setting benefits associated with a siting proposal. The Board shall determine what additional resources are needed by units of local government that either favor or oppose the siting of a commercial hazardous waste facility and shall develop recommendations as to what financial assistance and other resources the State should make available to such units of local government. In making its study, the Board shall consider the experience of units of local government in which hazardous waste facilities have been proposed to be sited in the past, and shall consider the needs of units of local government of representative sizes and locations within the State. The Board shall report its findings and recommendations to the Environmental Review Commission and the Joint Legislative Commission on Governmental Operations on or before 1 March 1992.

Sec. 50.4. Effective July 1, 1991, Section 238.2(b) of Chapter 689 of the 1991 Session Laws, The Appropriations and Budget Revenue Act of 1991, is amended by inserting immediately after the phrase "subsection (a)" the three places it occurs the phrase ", subdivisions (1) through (8)".

Sec. 50.5. Section 2 of Chapter 176 of the 1991 Session Laws reads as rewritten:

"Sec. 2. This act becomes effective ~~August 1, 1991~~, January 1, 1992."

Sec. 50.6. (a) Pursuant to the provisions of G.S. 14-250, for the 1991-93 fiscal biennium, the General Assembly authorizes the use of private license tags on State-owned motor vehicles only for the State Highway Patrol and for the following:

<u>Department</u>	<u>Exemption Category</u>	<u>Number</u>
Motor Vehicles	License and Theft	97
Justice	SBI Agents	277
Correction	Probation/Parole Surveillance Officers (intensive probation)	25
Crime Control and Public Safety	ALE Officers	92

(b) The 92 ALE vehicles authorized by this section to use private license tags shall be distributed as follows:

- (1) 54 among Agent I officers;
- (2) 20 among Agent II officers;
- (3) 1 to the Deputy Director;
- (4) 12 to the District Offices/Extra Vehicles; and
- (5) 5 to the Director, to be distributed at his discretion.

(c) Except as provided in this section, all State-owned motor vehicles shall bear permanent registration plates issued under G.S. 20-84.

(d) This section is effective July 1, 1991.

Sec. 50.7. Section 240 of Chapter 689 of the 1991 Session Laws, The Appropriations and Budget Revenue Act of 1991, is amended by deleting the number "\$10,246,368" and substituting "\$10,764, 288".

Sec. 51. Sec. 189.1(c) of Chapter 689 of the 1991 Session Laws, The Appropriations and Budget Revenue Act of 1991, is repealed.

Sec. 51.1. (a) Notwithstanding the provisions of Sections 3 and 28 of Chapter 689 of the 1991 Session Laws, the Office of State Budget and Management shall transfer six million six hundred thousand dollars (\$6,600,000), from the funds appropriated to the Reserve for Reimbursements to Local Governments and Shared Tax Revenues for the 1991-92 fiscal year, to the Clean Water Revolving Loan and Grant Fund created in G.S. 159G-5.

(b) Notwithstanding the provisions of G.S. 105-116, the Secretary of Revenue shall reduce the amount to be transferred to municipalities on or before December 15, 1991, pursuant to G.S. 105-116(d), by an amount equal to five million dollars (\$5,000,000). The Secretary of Revenue shall allocate this reduction on a pro rata basis among the municipalities entitled to receive a quarterly installment pursuant to G.S. 105-116(d) on or before December 15, 1991.

(c) Notwithstanding the provisions of G.S. 105-113.82, the Secretary of Revenue shall reduce the amount to be distributed to counties and cities for the 1991-92 fiscal year pursuant to G.S. 105-113.82 by an amount equal to one million six hundred thousand dollars (\$1,600,000). The Secretary of Revenue shall allocate this reduction on a pro rata basis among the counties and cities entitled to receive a distribution pursuant to G.S. 105-113.82 for the 1991-92 fiscal year.

(d) The General Assembly finds that the purpose of the allocation provided in this section is to meet the funding needs of local governments for water supply and wastewater treatment facilities, as requested by local governmental units. It is the intent of the General Assembly that the funds appropriated to the Reserve for Reimbursements to Local Governments and Shared Tax Revenues shall not be further reduced during the 1991-92 fiscal year except as provided in this section.

Sec. 51.2. Section 4.2 of Chapter 754, Session Laws of 1991, The Studies Act of 1991, reads as rewritten:

~~"Sec. 4.2. The Study Commission is authorized to study all aspects of the State Personnel System including, but not limited to, the impact of State and local governmental employees' retirement benefits~~

increases, the impact of the exemption from State taxes of State, local, federal, and private retirement benefits, and public employees' day care and medical and dental benefits. The Study Commission may study all aspects of the State Personnel System, including the following:

- (1) The impact of State and local governmental employees' retirement benefits increases;
- (2) The impact of the exemption from State taxes of State, local, federal, and private retirement benefits;
- (3) Public employees' day care and medical and dental benefits; and
- (4) Decentralization and related needs of the Office of State Personnel, with a particular focus on the Equal Employment Opportunity function, monitoring of State departments, and training of supervisors and administrators relative to their responsibilities under decentralization."

Sec. 52. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

RESOLUTIONS

S.J.R. 1

RESOLUTION 1

A JOINT RESOLUTION INFORMING HIS EXCELLENCY, GOVERNOR JAMES G. MARTIN, THAT THE GENERAL ASSEMBLY IS ORGANIZED AND READY TO PROCEED WITH PUBLIC BUSINESS AND INVITING THE GOVERNOR TO ADDRESS A JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. A committee of four Senators and four Representatives shall be appointed by the presiding officers of the respective houses to notify His Excellency, Governor James G. Martin, that the General Assembly is organized and is ready to proceed with public business, and to invite him to address a joint session of the Senate and House of Representatives in the Hall of the House of Representatives at 12:00 noon, Thursday, January 31, 1991.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of January, 1991.

H.J.R. 1

RESOLUTION 2

A JOINT RESOLUTION EXPRESSING SUPPORT FOR THE MILITARY TROOPS IN THE PERSIAN GULF AND HONORING THOSE WHO HAVE DIED WHILE SERVING IN THE PERSIAN GULF.

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Whereas, North Carolina takes great pride in the military personnel stationed at Camp Lejeune, Cherry Point, Fort Bragg, Pope Air Force Base, and Seymour Johnson Air Force Base; and

Whereas, more than 75,000 individuals from these military installations are serving in the Persian Gulf; and

Whereas, in addition, many North Carolinians who are members of the reserve components of the armed services and of the North Carolina National Guard are also serving in the Persian Gulf; and

Whereas, it is important to the military personnel and to their families that the citizens of this State support them during this crisis; and

Whereas, the General Assembly pledges to continue its support for the troops and their families and encourages the citizens of North Carolina to do the same; and

Whereas, the General Assembly is saddened by the loss of life of the military personnel serving in the Persian Gulf and expresses its sympathy to their families;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly of North Carolina wishes to express its support for the military troops serving in the Persian Gulf and for their families living in military communities in Craven, Cumberland, Onslow, and Wayne Counties and throughout North Carolina.

Sec. 2. The General Assembly of North Carolina wishes to honor the life and memory of those who have died while serving in the Persian Gulf.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the commanding officer at each military installation in North Carolina.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of February, 1991.

S.J.R. 187

RESOLUTION 3

A JOINT RESOLUTION INVITING THE HONORABLE JAMES G. EXUM, JR., CHIEF JUSTICE OF THE SUPREME COURT, TO ADDRESS A JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES.

Be it resolved by the Senate, the House of Representatives concurring:

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Section 1. The Honorable James G. Exum, Jr., Chief Justice of the Supreme Court, is invited to address a joint session of the Senate and House of Representatives in the Hall of the House of Representatives at 3:30 p.m., Wednesday, February 27, 1991.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to James G. Exum, Jr.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of February, 1991.

H.J.R. 202

RESOLUTION 4

A JOINT RESOLUTION HONORING HUGH CALE, A FORMER MEMBER OF THE GENERAL ASSEMBLY, AND COMMENDING ELIZABETH CITY STATE UNIVERSITY FOR ITS CONTRIBUTIONS TO THE ADVANCEMENT OF EDUCATION ON THE ONE HUNDREDTH YEAR OF THE UNIVERSITY'S FOUNDING.

Whereas, Hugh Cale was a black man born in 1835, in Perquimans County to John and Betsy Cale; and

Whereas, as a young man, Hugh Cale moved to Elizabeth City where he became a very influential and well-respected resident; and

Whereas, Hugh Cale was active in the Mt. Lebanon Church and the local Masons; and

Whereas, Hugh Cale, a leader in civic affairs, was elected justice of the peace, served two terms on the board of county commissioners, was a member of the county board of education, and was treasurer of Elizabeth City; and

Whereas, Hugh Cale helped petition to get the town's first fire engine, was a trustee for the first local black cemetery, and was president of the first fair held by blacks in Pasquotank County; and

Whereas, Hugh Cale's aspirations to achieve a higher office became a reality when he was elected to the House of Representatives of the General Assembly in 1876 and went on to serve in the 1879, 1880, 1885, and 1891 Sessions of the General Assembly; and

Whereas, Hugh Cale worked hard to improve the life and educational opportunities for blacks in northeastern North Carolina; and

Whereas, on March 3, 1891, the General Assembly of North Carolina ratified House Bill 383, sponsored by Representative Hugh Cale that read as follows:

"Section 1. That it shall be the duty of the state board of education to establish a normal school at Elizabeth City, in the county of

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Pasquotank, for the teaching and training of teachers of the colored race to teach in the common schools of the state.

Sec. 2. That the sum of five hundred dollars from the Fayetteville normal school fund and the further sums of one hundred dollars each from the Salisbury, Franklinton, Goldsboro and Plymouth normal school funds are hereby appropriated for the payment of instructors in said normal school at Elizabeth City.

Sec. 3. That all laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 4. This act shall go into effect from and after the first day of January, eighteen hundred and ninety-two."; and

Whereas, Hugh Cale died in 1910, knowing that his life had made a significant impact on those who knew him; and

Whereas, Hugh Cale would be proud that Elizabeth City State Normal School became Elizabeth City State University, a constituent institution of The University of North Carolina, dedicated to the pursuit of academic excellence; and

Whereas, Elizabeth City State University has expanded from a teacher preparatory institution to a university that offers bachelors degrees in a wide variety of courses; and

Whereas, on the one hundredth year of the University's founding, it is fitting that the General Assembly honors Hugh Cale and recognizes the progress that Elizabeth City State University has made;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly wishes to honor the life and memory of Hugh Cale.

Sec. 2. The General Assembly commends Elizabeth City State University for its contributions to the advancement of education. The General Assembly further extends its congratulations on the centennial celebration of Elizabeth City State University.

Sec. 3. The Speaker of the House of Representatives and the President Pro Tempore of the Senate may appoint a delegation of the General Assembly to meet in Elizabeth City on Friday, March 1, 1991, to hold a mock session of the General Assembly for the purpose of commemorating the centennial of Elizabeth City State University.

Sec. 4. The Secretary of State shall transmit a certified copy of this resolution to Chancellor Jimmy R. Jenkins of Elizabeth City State University.

Sec. 5. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of March, 1991.

S.J.R. 208

RESOLUTION 5

A JOINT RESOLUTION HONORING THE FOUNDERS OF THE NORTH CAROLINA AGRICULTURAL AND TECHNICAL STATE UNIVERSITY AT GREENSBORO AND URGING THE GOVERNOR TO ISSUE A PROCLAMATION RECOGNIZING THE UNIVERSITY'S CENTENNIAL.

Whereas, the people of North Carolina are deeply indebted to the North Carolina General Assembly of 1891 and other leaders of just over a century ago whose vision created on March 9, 1891, the Agricultural and Mechanical College for the Colored Race, now known as the North Carolina Agricultural and Technical State University; and

Whereas, special honor is accorded the memory of black legislators, James O'Hara and John A. White and black editor, Charles N. Hunter for their superb work as advocates to establish a State college for blacks; and

Whereas, a bill to establish a college for blacks was introduced in the General Assembly on March 5, 1891, by Senator John Bellamy of Wilmington, North Carolina; and

Whereas, the North Carolina Agricultural and Technical State University was established as the Agricultural and Mechanical College for the Colored Race by an act of the General Assembly of North Carolina on March 9, 1891; and

Whereas, in creating the Agricultural and Mechanical College for the Colored Race, the General Assembly provided that a sum of \$2,500 be annually appropriated to sustain the college; and

Whereas, on March 23, 1891, the Agricultural and Mechanical Board of Trustees accepted the City of Greensboro's offer of \$11,000 and 14 acres of land to locate the college in Greensboro; and

Whereas, the Agricultural and Mechanical College, led by President Dr. J.O. Crosby, opened its doors to 37 students in the fall of 1893; and

Whereas, from that humble beginning, the school has developed into the North Carolina Agricultural and Technical State University, with 6,500 students, and by outstanding academic programs and research acumen, the University has rendered service to the State and the nation for 100 years, and it is widely respected as one of the foremost historically black universities in the nation; and

Whereas, the University's strength has been the discovering and development of talent in thousands of young people, and the channeling of this talent into creative endeavors; and

Whereas, the graduates and former students of A & T State University continue to achieve national and international prominence in a number of career fields; and

Whereas, the University, through its Chancellor, faculty, staff, administrative team, students, Board of Trustees, Board of Visitors, and alumni, has developed an inspired Long Range Plan and Vision statement to move the University confidently into the 21st Century;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly recognizes and honors the founders of the North Carolina Agricultural and Technical State University for its vision, commends the University for its contributions to North Carolina and its people, extends congratulations on the occasion of the institution's Centennial celebration, and eagerly anticipates a second century of service by the University on behalf of the people of North Carolina and the nation.

Sec. 2. In order to recognize further the Centennial celebration of the North Carolina Agricultural and Technical State University, the General Assembly urges the Governor to issue a proclamation commemorating the founding of the North Carolina Agricultural and Technical State University on March 9, 1891.

Sec. 3. The Secretary of State shall send a certified copy of this resolution to Edward B. Fort, the eighth chief executive officer of North Carolina Agricultural and Technical State University and the third to hold the title as its Chancellor, and to Governor James G. Martin.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of March, 1991.

S.J.R. 121

RESOLUTION 6

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JUDGE WILLIAM SHAKESPEARE "SANDY" HARRIS JR., FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, William Shakespeare "Sandy" Harris Jr. was born in Durham, North Carolina, on July 20, 1924, to William Shakespeare Harris Sr. and Eunice Hamlin Fairchild Harris; and

Whereas, William Shakespeare "Sandy" Harris Jr. received a B.A. degree in 1948 and a law degree in 1950 from the University of North Carolina at Chapel Hill; and

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Whereas, William Shakespeare "Sandy" Harris Jr. was a veteran of the Construction Battalion Division of the United States Navy during World War II; and

Whereas, William Shakespeare "Sandy" Harris Jr. served with honor and distinction in the North Carolina House of Representatives from 1969 until 1977; and

Whereas, William Shakespeare "Sandy" Harris Jr. served as a North Carolina District Court Judge from 1977 until 1987 and as a Chief Judge from 1987 until his retirement in March 1990; and was a member of the Judicial Standards Commission of North Carolina; and

Whereas, William Shakespeare "Sandy" Harris Jr. was a member of several professional organizations, including the Alamance County Bar Association, the North Carolina State Bar Association, and the American Bar Association; and

Whereas, William Shakespeare "Sandy" Harris Jr. cared about his community; was one of the founders of ACCESS - Meals on Wheels; was past president of the Graham Kiwanis Club; and was chapter chairman of the Alamance County Chapter of the American Red Cross from 1965 until 1968; and

Whereas, William Shakespeare "Sandy" Harris Jr. served on a number of boards, including the Salvation Army Board, the Red Cross Executive Board, the executive board of the Alamance County Christian Counseling Center, the Board of Directors of Kingsdown, Inc., of Mebane, the Graham First South Bank Board of Directors, and the Board of Directors of the North Carolina Railroad Commission from 1969 until 1973; and

Whereas, William Shakespeare "Sandy" Harris Jr. was a member of several fraternal organizations, including Phi Alpha Delta Legal Fraternity, Bingham Lodge # 272 AF and AM, and the Burlington Shrine Club; and

Whereas, William Shakespeare "Sandy" Harris Jr. was an active member of the Graham Presbyterian Church where he served as an elder, deacon, and trustee; and

Whereas, William Shakespeare "Sandy" Harris Jr. died on October 25, 1990; and

Whereas, William Shakespeare "Sandy" Harris Jr. is survived by his wife, Lula Chapman Harris; a daughter, Susan Harris Weatherstone of Zaire, Africa; two sons, Charles Harris of Burlington and Frank Harris of Hickory; one brother, Charles Jay Harris Sr. of Mebane; and three grandchildren;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly wishes to honor the life and memory of Judge William Shakespeare "Sandy" Harris Jr. and to express its deepest sympathy to his family, colleagues, and friends.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Judge William Shakespeare "Sandy" Harris Jr.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of March, 1991.

H.J.R. 255

RESOLUTION 7

A JOINT RESOLUTION HONORING THE LIFE AND SERVICES OF THOMAS JACKSON WHITE, JR., FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, there have been those among us, says the writer of the Book of Ecclesiasticus, "who have left a name behind them, that their praises might be reported." Such a man was Thomas Jackson White, Jr.; and

Whereas, Thomas Jackson White, Jr. was born in Cabarrus County on March 6, 1903, and was educated at North Carolina State College of Agriculture and Engineering and the Law School of the University of North Carolina at Chapel Hill; and

Whereas, as an attorney-at-law, Thomas Jackson White, Jr. developed and maintained through six decades a successful civil and criminal practice in the State and federal courts of eastern North Carolina; and

Whereas, Thomas Jackson White, Jr. was elected an officer of local and State bar organizations and a Fellow of the American College of Trial Lawyers; and

Whereas, for a quarter of a century, Thomas Jackson White, Jr. served his adopted county of Lenoir as County Attorney; and

Whereas, Thomas Jackson White, Jr., a life-long sportsman, strove to secure for the public the pleasures of field and stream that so delighted him, and to that end he led in the creation by the 1947 General Assembly of the North Carolina Wildlife Resources Commission, of which he served as a member and first Chairman; and

Whereas, it was in the legislative arena, where Thomas Jackson White, Jr. served as a member of the North Carolina House of Representatives from 1952 to 1958 and of the North Carolina Senate from 1960 to 1968, that he attained statewide recognition and his most rewarding opportunities for public leadership; and

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Whereas, to every legislative task he undertook, Thomas Jackson White, Jr. brought the studious habits of a lifetime and the skills of an able advocate that made him a stalwart friend or formidable foe; and

Whereas, Thomas Jackson White, Jr. knew and relished the uses of power, fairly exercised, in the service of causes that claimed his dedication; and

Whereas, in the vital realm of state finance, Thomas Jackson White, Jr. performed most constructively as Chairman of the Senate Finance Committee in the 1961 Session, as Chairman of the Senate Appropriations Committee in the 1963, 1965, and 1967 Sessions, as a member of the Advisory Budget Commission in the 1961 Session, and as Chairman of the Advisory Budget Commission in the 1963, 1965, 1967, 1969, and 1971 Sessions; and

Whereas, legislative and legal skills caused Thomas Jackson White, Jr.'s services to be called into requisition often by the Governor, who asked him to serve on State study commissions, including those dealing with the reorganization of State government and the restructuring of higher education; and

Whereas, for many years after his retirement from the General Assembly, Thomas Jackson White, Jr. continued to be a familiar presence in the State Legislative Building as an effective lobbyist; and

Whereas, as a devoted alumnus of two of the constituent institutions of The University of North Carolina, Thomas Jackson White, Jr. served the University as a member of the former Board of Trustees of The University of North Carolina from 1965 to 1971 and its Executive Committee from 1967 to 1971 and as a member of the Board of Governors of The University of North Carolina and its preparatory Planning Committee from 1971 to 1977, when he played a major part in the organization and initiation of the University in its present form; and

Whereas, Thomas Jackson White, Jr.'s most enduring monuments are the State Legislative Building and the North Carolina Museum of Art Building; and

Whereas, his experience as a member of the House of Representatives of 1953, 1955, and 1957 convinced Thomas Jackson White, Jr. that the historic State Capitol of North Carolina was no longer adequate to meet the space needs of a modern legislature; and

Whereas, Thomas Jackson White, Jr. did not seek reelection in 1958, and instead spent the legislative session of 1959 successfully advocating among his former colleagues the cause of a new building for the General Assembly and, as a result of his efforts, the initial appropriation for the State Legislative Building was made in 1959; and

Whereas, from 1959 until completion of that building, Thomas Jackson White, Jr. made it his concern as Chairman of the State

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Legislative Building Commission to see that the State got a first-class building to accommodate the General Assembly adequately; and

Whereas, while it is probable that the General Assembly would in time have concluded on its own that new facilities for its use were necessary, the fact that those facilities were provided in time for use by the General Assembly of 1963 and that they were so well suited to their purpose can be credited to the zeal and effectiveness with which Thomas Jackson White, Jr. pursued that objective; and

Whereas, when the General Assembly determined in 1967 to erect a new structure for the North Carolina Museum of Art, Governor Dan K. Moore wisely turned to Thomas Jackson White, Jr. to chair the Museum of Art Building Commission; and

Whereas, from the beginning to the completion of that project in 1983, Thomas Jackson White, Jr. pursued with his usual thoroughness and determination the tasks of public and private fund-raising and location and design of the Art Museum Building; and

Whereas, generations of North Carolinians who will never know his name will benefit from these two constructive legacies by Thomas Jackson White, Jr. to his fellow citizens; and

Whereas, to his several fraternal organizations and to the Episcopal Church, Thomas Jackson White, Jr. gave loyal support; and

Whereas, as a proud and steadfast Democrat all his life, Thomas Jackson White, Jr. served his party faithfully and effectively in all weathers; and

Whereas, Thomas Jackson White, Jr., citizen of North Carolina, died on February 5, 1991, bringing to an end his long and constructive life; and

Whereas, Thomas Jackson White, Jr. is survived by his wife, Virginia Edwards White, and four children, Thomas Jackson White III, Isabell White Davis, Virginia Turley Paulsen, and Sarah Ellen White Archie; and

Whereas, it is the desire of the General Assembly to take note of Thomas Jackson White, Jr.'s achievements and pay tribute to his life and services;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly recognizes Thomas Jackson White, Jr. for public services as legislator, civic leader, builder of public monuments, and citizen, for his qualities of diligence and devotion in the service of the public, for his love of the State of North Carolina and his readiness to serve its citizens, and for his inestimable qualities as an individual and a friend, the General Assembly of North Carolina records its recognition and profound thanks.

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Sec. 2. The General Assembly expresses its deepest sympathy to the family of Thomas Jackson White, Jr. for the loss of this distinguished citizen.

Sec. 3. The Secretary of State shall transmit certified copies of this resolution to the widow and children of Thomas Jackson White, Jr.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of March, 1991.

S.J.R. 118

RESOLUTION 8

A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENT OF WILLIAM T. GRAHAM AS COMMISSIONER OF BANKS.

Whereas, under the provisions of G.S. 53-92 appointment by the Governor of the Commissioner of Banks is subject to confirmation by the General Assembly by joint resolution; and

Whereas, the term of the present Commissioner of Banks will end on March 31, 1991; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the name of his appointee to fill the term of Commissioner of Banks which will begin April 1, 1991, and expire March 31, 1995:

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The appointment of William T. Graham as Commissioner of Banks for a term to expire March 31, 1995, is confirmed.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of March, 1991.

S.J.R. 236

RESOLUTION 9

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JAMES EARL "JIM" EZZELL, JR., LATE MEMBER OF THE GENERAL ASSEMBLY.

Whereas, James Earl "Jim" Ezzell, Jr. was born in Rocky Mount on September 6, 1936, to James Earl and Edith Batchelor Ezzell; and

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Whereas, despite a birth defect that limited his coordination so that he had to use crutches to walk, James Earl "Jim" Ezzell, Jr. graduated from Rocky Mount Senior High School in 1956 and Wake Forest University, where he received a BA in 1960 and a LLD in 1963; and

Whereas, James Earl "Jim" Ezzell, Jr. was an outstanding attorney in Rocky Mount; and

Whereas, James Earl "Jim" Ezzell, Jr. served as Solicitor of Recorders Court from 1964 until 1968 and as a district court judge from 1980 until 1983; and

Whereas, James Earl "Jim" Ezzell, Jr. served with honor and distinction in the General Assembly, serving in the House of Representatives from 1977 until 1980 and in the Senate from 1985 until his death in 1991; and

Whereas, during his service in the General Assembly, James Earl "Jim" Ezzell, Jr. was chair of the Constitution Committee and vice-chair of the Human Resources Committee, and was a member of the Appropriations Committee; the Appropriations Committee on Human Resources; the Banks and Thrift Institutions Committee; the Base Budget Committee; the Insurance Committee; the Judiciary I Committee; and the Rules and Operations of the Senate Committee; and

Whereas, James Earl "Jim" Ezzell, Jr. was a member of several professional and fraternal organizations, including the North Carolina Bar Association, the Masons, and the Shriners; and

Whereas, James Earl "Jim" Ezzell, Jr. was a faithful member of the Englewood Baptist Church; and

Whereas, James Earl "Jim" Ezzell, Jr. died on January 30, 1991, shortly after taking the oath of office in the Senate of the 1991 General Assembly; and

Whereas, James Earl "Jim" Ezzell, Jr. is survived by his wife, Patsy Wall Ezzell, and his children, Mark Ezzell, James Ezzell, III, and Stanton Ezzell; and

Whereas, with the untimely death of James Earl "Jim" Ezzell, Jr., his family, his community, the General Assembly, and the State of North Carolina lost a loved one, friend, and colleague who was greatly admired and respected; and

Whereas, all who knew James Earl "Jim" Ezzell, Jr. will miss his great sense of humor, sharp legal mind, and story-telling abilities;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly wishes to honor the life and memory of James Earl "Jim" Ezzell, Jr.

Sec. 2. The General Assembly wishes to express its sympathy to the family of James Earl "Jim" Ezzell, Jr.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of James Earl "Jim" Ezzell, Jr.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of April, 1991.

S.J.R. 646

RESOLUTION 10

A JOINT RESOLUTION HONORING DUKE UNIVERSITY ON WINNING THE NCAA DIVISION I MEN'S BASKETBALL CHAMPIONSHIP.

Whereas, the student athletes on Duke University men's basketball team won the 1991 National Collegiate Athletic Association (NCAA) Division I Championship by defeating the University of Kansas with a score of 72-65; and

Whereas, this is the first national basketball title for Duke University; and

Whereas, Duke University holds an impressive record of 44 wins in 16 trips to the NCAA Tournament; and

Whereas, Duke University has been to the Final Four nine times, making five appearances in the last six years; and

Whereas, Head Coach Mike Krzyzewski is only the second coach in history to take a team to four consecutive appearances in the Final Four and has the highest winning percentage for active coaches in NCAA Tournament games with a record of 27-7; and

Whereas, these extraordinary accomplishments have brought great honor and distinction to our State and deserve recognition:

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly expresses the extreme appreciation and admiration of the people of North Carolina to Duke University men's basketball team for winning the 1991 National Collegiate Athletic Association Division I Championship.

Sec. 2. The General Assembly recognizes the achievements of head coach, Mike Krzyzewski; assistant coaches, Mike Brey, Tommy Amaker, Pete Gaudet, and Jay Bilas; team members, Christian Ast, Kenny Blakeney, Clay Buckley, Marty Clark, Brian Davis, Grant Hill, Thomas Hill, Bobby Hurley, Greg Koubek, Christian Laettner, Antonio Lang, Bill McCaffrey, and Crawford Palmer; trainer, Max Crowder; and senior managers, Ivan Jones and Peter Lowder.

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Sec. 3. The Secretary of State shall send certified copies of this resolution to Duke University President H. Keith H. Brodie, Athletic Director Tom Butters, and all of the individuals honored in this resolution.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of April, 1991.

H.J.R. 695

RESOLUTION 11

A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENTS OF THOMAS W. D'ALONZO AND KENNETH R. HARRIS TO MEMBERSHIP ON THE STATE BOARD OF EDUCATION.

Whereas, under the provisions of G.S. 115C-10, appointments by the Governor to membership on the State Board of Education are subject to confirmation by the General Assembly by joint resolution; and

Whereas, vacancies have occurred on the State Board of Education; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the names of his appointees to fill the terms of membership on the State Board of Education which expire March 31, 1999:

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The appointments of Thomas W. D'Alonzo and Kenneth R. Harris to membership on the State Board of Education for terms to expire March 31, 1999, are confirmed.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of May, 1991.

H.J.R. 743

RESOLUTION 12

A JOINT RESOLUTION SETTING THE DATE FOR THE SENATE AND HOUSE OF REPRESENTATIVES TO ELECT MEMBERS OF THE STATE BOARD OF COMMUNITY COLLEGES.

Be it resolved by the House of Representatives, the Senate concurring:

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Section 1. Pursuant to G.S. 115D-2.1(b)(4)f., the House of Representatives and the Senate shall elect members to the State Board of Community Colleges during the regular sessions of the two houses held on Tuesday, May 14, 1991. At that time the Senate shall elect two members to the State Board for terms of six years beginning July 1, 1991; the House of Representatives shall elect two members to the State Board for terms of six years beginning July 1, 1991.

Sec. 2. Each house shall follow the procedure set out in G.S. 115D-2.1 for nomination and election of members of the State Board.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of May, 1991.

H.J.R. 919

RESOLUTION 13

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY
OF WILSON FRANKLIN YARBOROUGH, SR., FORMER
MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Wilson Franklin Yarborough, Sr., the youngest of Franklin C. and Romelia Marsh Yarborough's eight children, was born in the Grays Creek area of Cumberland County, on December 10, 1908; and

Whereas, Wilson Franklin Yarborough, Sr. was educated in the Grays Creek Schools and the Brevard School of Business; and

Whereas, Wilson Franklin Yarborough, Sr. founded Yarborough Motor Company in 1934; and

Whereas, Wilson Franklin Yarborough, Sr. served with honor and distinction in the North Carolina House of Representatives during the 1955 and 1957 Sessions; and

Whereas, Wilson Franklin Yarborough, Sr. donated his time and expertise to his profession and community through service on various boards and organizations, including the North Carolina Automobile Dealers Association, as president, the Fayetteville New Car and Truck Dealers Association, as its first president, the Guaranty Savings and Loan Association, as president, the First Union National Bank of Fayetteville, as chairman of the board of directors, the Mid-South Insurance Company, as vice-president, and the Business Development Corporation of North Carolina, as vice-president; and

Whereas, Wilson Franklin Yarborough, Sr. was active throughout his life in the City of Fayetteville's civic affairs, serving as trustee and treasurer of Methodist College, as chairman of the Fayetteville Auditorium-Exhibit Hall Commission, as director and past president of the Fayetteville Area Chamber of Commerce, as vice-

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president of the Fayetteville YMCA, and as a member of the Fayetteville City Council; and

Whereas, admired by members of his community and profession. Wilson Franklin Yarborough, Sr. received the "Man of the Year" award in 1967, given by the Board of Realtors and Fayetteville Area Chamber of Commerce, and was a two-time recipient of the Benjamin Franklin Quality Dealer Award given by The Saturday Evening Post for the most Outstanding Franchised Automobile Dealer in North Carolina; and

Whereas, Wilson Franklin Yarborough, Sr. for his outstanding contribution to higher education was conferred in 1983 an honorary Doctor of Letters Degree from Methodist College; and

Whereas, Wilson Franklin Yarborough, Sr. was dedicated to the Methodist church, serving as a charter member of the Haymount Methodist Church and chairman of the board of stewards; and

Whereas, Wilson Franklin Yarborough, Sr. was a member and past president of the Fayetteville Rotary Club, a Mason, and a Shriner; and

Whereas, Wilson Franklin Yarborough, Sr. died on June 24, 1989; and

Whereas, Wilson Franklin Yarborough, Sr. is survived by his wife, Mary Butler Yarborough, and his sons, Wilson F. Yarborough, Jr., Ramon L. Yarborough, and David B. Yarborough; and

Whereas, Wilson Franklin Yarborough, Sr. will be remembered for his kindness, his devotion to his family and church, and his public service to his community and State;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly wishes to honor the life and memory of Wilson Franklin Yarborough, Sr. and expresses its appreciation for his great deeds and public service.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Wilson Franklin Yarborough, Sr.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of May, 1991.

H.J.R. 286

RESOLUTION 14

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CHARLES RAPER JONAS, FORMER CONGRESSMAN AND "MISTER REPUBLICAN".

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Whereas, Charles Raper Jonas was born on December 9, 1904, in Lincoln County to Charles Andrew and Rosa Petrie Jonas; and

Whereas, Charles Raper Jonas graduated from Lincolnton High School in 1921, where he was voted "Best All Around Member of the Senior Class"; and

Whereas, Charles Raper Jonas received an AB degree in 1925 and a Juris Doctorate with high honors in 1928 from the University of North Carolina at Chapel Hill; and

Whereas, during Charles Raper Jonas's undergraduate years at the University of North Carolina at Chapel Hill, he was a member of the track team, serving as captain in 1926 and holder of the State record in the half-mile run; and

Whereas, while at the University of North Carolina at Chapel Hill, Charles Raper Jonas was president of the Dialectic Society in 1925, president of the Monogram Club in 1925, president of the student body in 1926, and permanent president of the Class of 1925; and

Whereas, Charles Raper Jonas was editor-in-chief of the North Carolina Law Review from 1927 to 1928 and a member of the Order of the Coif; and

Whereas, upon graduating from law school, Charles Raper Jonas entered into the practice of law with his father, Charles A. Jonas in 1928, in the firm of Jonas and Jonas; and

Whereas, Charles Raper Jonas was guided by the examples of his father, Charles A. Jonas, who had been a member of both the North Carolina House of Representatives and the Senate, the first Republican from North Carolina to serve in Congress in the twentieth century, and a candidate for the United States Senate; and

Whereas, Charles Raper Jonas practiced law continuously as a member of Jonas and Jonas until September 1940, when he was called to active service as a member of the North Carolina National Guard; and

Whereas, Charles Raper Jonas had an extensive military career, serving in the United States Army from 1940 to 1946, in the Cavalry as a Lieutenant Colonel in 1945, and in the Judge Advocate General Corps of the North Carolina National Guard as a Brigadier General; and

Whereas, Charles Raper Jonas was a member of several professional organizations, including the North Carolina Bar Association, serving as President from 1946 until 1947 and the North Carolina Board of Law Examiners from 1948 to 1949; and

Whereas, Charles Raper Jonas was an Assistant United States Attorney from 1931 to 1932; and

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Whereas, Charles Raper Jonas was elected to Congress in 1952, the second Republican from North Carolina this century, his father being the first, and served with distinction until 1972; and

Whereas, Charles Raper Jonas was a member of the Congressional Appropriations Committee from 1954 until 1972, during which period the committee cut ninety-three billion dollars from budgets proposed by five presidents, including Truman, Eisenhower, Kennedy, Johnson, and Nixon; and

Whereas, in respect for Charles Raper Jonas's long and pioneering service to his Party and to the goal of making North Carolina a two-party State, he came to be known as "Mr. Republican";

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly of North Carolina wishes to honor the life and memory of Charles Raper Jonas.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Charles Raper Jonas.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1991.

S.J.R. 194

RESOLUTION 15

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ROBERT STRINGFIELD SWAIN, LATE MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Robert Stringfield Swain was born in Asheville on July 25, 1921, to John Edward and Mozelle Brewster Stringfield Swain; and

Whereas, Robert Stringfield Swain graduated from Lee H. Edwards High School in 1939, attended Mars Hill College in 1939, the University of North Carolina at Chapel Hill from 1939 until 1940, Biltmore College in 1940, and the University of New Mexico from 1941 until 1942, and received a LLB degree from the University of North Carolina at Chapel Hill in 1949; and

Whereas, Robert Stringfield Swain served in the United States Army Corps as a first lieutenant from 1943 until 1946; and

Whereas, during World War II, Robert Stringfield Swain survived two plane crashes and was awarded the Purple Heart and the Distinguished Flying Cross; and

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Whereas, Robert Stringfield Swain practiced law in Asheville for a number of years and served as Solicitor of the 19th district of Buncombe and Madison Counties from 1955 until 1967; and

Whereas, in testimony to his distinguished service as a leader and public servant to the State, Robert Stringfield Swain was elected to the North Carolina Senate in 1977 and served continuous terms until his death in 1990; and

Whereas, while serving in the General Assembly, Robert Stringfield Swain chaired the Judiciary I Committee and the Special Ways and Means Committee; was vice chair of the State Government Committee, and was a member of several other committees, including Appropriations; Appropriations on Education; Base Budget; Election Laws; Local Government and Regional Affairs; Small Business; Veteran and Military Affairs; Law Enforcement; and Senior Citizens; and

Whereas, Robert Stringfield Swain served on the Criminal Justice Commission of the Southern Legislative Conference and the Governor's Crime Commission; and

Whereas, Robert Stringfield Swain was a member of several professional, civic, and fraternal organizations, including the Buncombe County Bar Association, the North Carolina Bar Association, the North Carolina Trial Lawyers Association, Moose International, Phi Alpha Delta, the York Rite Masons, and the Shriners; and

Whereas, Robert Stringfield Swain was active in the Methodist Church, serving on the board of stewards and as a Sunday school teacher; and

Whereas, Robert Stringfield Swain died on August 19, 1990; and

Whereas, Robert Stringfield Swain is survived by his son, Robert Edward and four daughters: Jennifer Ellen, Barbara Giffen, Patricia Ann, and Katherine Anne;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly of North Carolina wishes to honor the life and memory of Robert Stringfield Swain and extends its deepest sympathy to his family.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Robert Stringfield Swain.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

S.J.R. 153

RESOLUTION 16

A JOINT RESOLUTION COMMEMORATING THE LIFE OF GURNEY P. HOOD UPON THE SIXTIETH ANNIVERSARY OF THE NORTH CAROLINA BANKING COMMISSION.

Whereas, on April 2, 1931, the General Assembly created the North Carolina Banking Commission as the administrative agency that charters North Carolina banks and regulates them for the safety of the public and for the economic benefit of the State; and

Whereas, the late Gurney P. Hood was appointed the first Commissioner of Banks and assumed the duties of that office on May 27, 1931; and

Whereas, the General Assembly has since committed to the charge of the Banking Commission/Commissioner of Banks consumer finance companies in 1945, money transmitters in 1963, preneed funeral trust licensees in 1969, bank holding companies in 1984, mortgage bankers and brokers in 1988, and refund anticipation lenders in 1989; and

Whereas, the Banking Commission has for 60 years faithfully discharged its duty as a financial regulatory agency; and

Whereas, due to such diligent oversight and the resulting strength and soundness of North Carolina banks, the North Carolina financial community is viewed as one of the most enviable in the nation; and

Whereas, the late Gurney P. Hood was instrumental in developing the strength and reputation of the North Carolina Banking Commission, having served as Commissioner of Banks until April 14, 1951, a period of almost 20 years;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly does hereby officially commemorate the life and service of the late Gurney P. Hood upon the sixtieth anniversary of the North Carolina Banking Commission and commends the Commission for its vigilance and for having produced a safe and highly effective banking environment for North Carolina and its people.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

S.J.R. 899

RESOLUTION 17

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10 appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, a vacancy will occur on the North Carolina Utilities Commission on June 30, 1991; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the name of his appointee to serve a term on the North Carolina Utilities Commission which will begin July 1, 1991, and expire June 30, 1999;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The appointment of Allyson K. Duncan to the North Carolina Utilities Commission for a term to begin July 1, 1991, and expire June 30, 1999, is confirmed.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

S.J.R. 958

RESOLUTION 18

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CLYDE ALLISON SHREVE, SR., FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Clyde Allison Shreve, Sr., son of James and Bessie Lester Shreve, was born on June 25, 1908, in Rockingham County; and

Whereas, Clyde Allison Shreve, Sr. graduated from Bethany High School in Rockingham County in 1927, the University of North Carolina in 1931, and the Woodrow Wilson College of Law in Atlanta in 1935; and

Whereas, Clyde Allison Shreve, Sr. possessed extraordinary oratorical skills; and

Whereas, Clyde Allison Shreve, Sr. practiced law for a span of more than five decades; and

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Whereas, Clyde Allison Shreve, Sr. kept a law office in Greensboro and a law office in Stokesdale, often working in Greensboro all day, and then seeing clients in Stokesdale late into the evening; and

Whereas, Clyde Allison Shreve, Sr. rendered distinguished service to North Carolina, as a member of the House of Representatives, serving in the 1943, 1947, 1949, 1951, 1955, and 1957 General Assemblies; and

Whereas, Clyde Allison Shreve, Sr. helped to shape much of the legislation of the 1940s and 1950s; and

Whereas, Clyde Allison Shreve, Sr. never sought higher office, but gladly gave his time, energy, and influence to help others in whose talents and leadership abilities he had much faith; and

Whereas, Clyde Allison Shreve, Sr. was a member of the State Board of Civil Air Patrol and the North Carolina Farm Bureau; and

Whereas, Clyde Allison Shreve, Sr. worked for the betterment of his community, as a member of the Greensboro Chamber of Commerce, the Sertoma Club, the Baptist Church, and as a member of numerous fraternal organizations including Stokesdale Lodge No. 428, A.F. & A.M. and Summerfield Council No. 174; and

Whereas, Clyde Allison Shreve, Sr. was also a member of several professional organizations including the Greensboro Bar Association and the American Bar Association; and

Whereas, Clyde Allison Shreve, Sr.'s greatest passions were his family and his law practice; and

Whereas, Clyde Allison Shreve, Sr. loved all people, regardless of their backgrounds or circumstances, and often helped them through times of trouble and stress; and

Whereas, Clyde Allison Shreve, Sr. died on March 15, 1991; and

Whereas, Clyde Allison Shreve, Sr. will be remembered by those who knew him as a man who not only gave good advice but practiced what he preached; and

Whereas, Clyde Allison Shreve, Sr. is survived by his wife, Ruth Marie Doggett Shreve, his son Clyde Allison Shreve, Jr., and his daughter, Donna Ruth Shreve;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly wishes to express its high regard for the life and service rendered by Clyde Allison Shreve, Sr., former member of the General Assembly, and mourns the loss of one of North Carolina's most distinguished citizens.

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Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Clyde Allison Shreve, Sr.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of June, 1991.

H.J.R. 1299

RESOLUTION 19

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JULIUS REID POOVEY, SR., FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Julius Reid Poovey, Sr., son of Lloyd Willard Poovey and Nancy Thomas Reid Poovey, was born September 24, 1902, in Hickory; and

Whereas, Julius Reid Poovey, Sr. graduated from the Hickory City Schools, attended Weaver College, and was a commercial graduate of Lenoir-Rhyne College in 1922; and

Whereas, Julius Reid Poovey, Sr. married Kathryn Icard on April 7, 1928; and

Whereas, Julius Reid Poovey, Sr. served in the Coast Guard Reserve from 1944 to 1945; and

Whereas, Julius Reid Poovey, Sr. was an accountant, and served as Justice of the Peace for 10 years in Hickory, as Judge Pro-Tem of the Municipal Court of Hickory for one year, and as a magistrate in Catawba County for 12 years; and

Whereas, Julius Reid Poovey, Sr. was active in politics, serving on the Catawba County Board of Elections, the Board of Advisors of the North Carolina Federation of College Republicans, and a member of State, county, and precinct Republican Executive Committees; and

Whereas, Julius Reid Poovey, Sr. served the State with honor and distinction as a Representative in the 1967, 1977, 1979, 1981, and 1983 General Assemblies, and as a Senator in the 1969 and 1973 General Assemblies; and

Whereas, Julius Reid Poovey, Sr.'s election to the House of Representatives in 1966 made him the first Catawba County Republican elected to the House of Representatives since 1928 and his election to the Senate in 1968 made him one of the first two Republicans elected to the Senate since Reconstruction; and

Whereas, during Julius Reid Poovey, Sr.'s service to the General Assembly, he had many committee assignments, including Appropriations, Elections Laws, Finance, Higher Education, Highway Safety, Insurance as vice-chair, Judiciary I as vice-chair, Mental Health, Military and Veterans Affairs, Personnel and Employment

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Programs, Public Health, State Government, Transportation, and Wildlife; and

Whereas, Julius Reid Poovey, Sr. was appointed to the Public Education Policy Council in 1983 and retired from the House of Representatives on December 31, 1984; and

Whereas, Julius Reid Poovey, Sr. also ran for Mayor of Hickory and Clerk of Superior Court of Catawba County; and

Whereas, Julius Reid Poovey, Sr. was nominated to the North Carolina Republican Hall of Fame by the Catawba County Republican Executive Committee in 1987, and was a candidate for the Charles R. Jonas Award, presented annually to the one person in the State who, throughout a lifetime, made a significant contribution to the Republican Party; and

Whereas, Julius Reid Poovey, Sr. was active in the Hickory American Legion Post No. 48 and the Episcopal Church; and

Whereas, Julius Reid Poovey, Sr. died unexpectedly on January 24, 1990; and

Whereas, Julius Reid Poovey, Sr. is survived by a daughter, Nancy Yount, three sons, J. Reid Poovey, Jr., William B. Poovey, and James N. Poovey, and other relatives;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the life and memory of Julius Reid Poovey, Sr. and expresses the deep gratitude and appreciation of this State and its citizens for his life and service to North Carolina.

Sec. 2. The General Assembly joins the family and friends of Julius Reid Poovey, Sr. in mourning the loss of one of the State's most respected citizens.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Julius Reid Poovey, Sr.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

S.J.R. 962

RESOLUTION 20

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ANGELINE DAVIS SMITH.

Whereas, Angeline Davis Smith was born in Florence, South Carolina, on February 7, 1908; and

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Whereas, Angeline Davis Smith's childhood was spent in the pleasant surroundings of her native home, where Christian principles were instilled, along with the wholesome values that persisted throughout her life; and

Whereas, Angeline Davis Smith earned an AB degree from Benedict College, in Columbia, South Carolina, a MS degree from North Carolina A & T State University in 1948, and furthered her studies at Atlanta University, Arkansas State College, the University of Chicago, and the University of Minnesota; and

Whereas, while attending North Carolina A & T State University, Angeline Davis Smith met and married Samuel Cooper Smith, who became the love of her life for forty-six years; and

Whereas, in Greensboro, Angeline Davis Smith taught English at James B. Dudley High School and later transferred to Ben L. Smith High School; and

Whereas, after retiring from teaching in 1972, Angeline Davis Smith continued to devote service to her former students from throughout the nation many of whom she kept in touch with until her death; and

Whereas, Angeline Davis Smith valued all of her former students and their accomplishments and referred to them as her "pearls" and she had many, many "pearls"; and

Whereas, the number of lives Angeline Davis Smith touched and inspired exemplified her commitment and dedication; and

Whereas, Angeline Davis Smith was a member of the St. James Presbyterian Church, serving in many capacities, including ruling elder, for over forty years; and

Whereas, Angeline Davis Smith was active in many community organizations and served these organizations over a span of fifty years; and

Whereas, in the 1940s and 1950s, Angeline Davis Smith worked to integrate the YWCA; and

Whereas, Angeline Davis Smith served on the Neighborhood Planning and Development Committee, the Family Life Council, the Frank Graham Symposium, the United Way Public Information and Education Division, the Council on Aging Roundtable, the Hayes Taylor YMCA Contribution Executive Committee, North Carolina 2000, and Greensboro Visions; and

Whereas, Angeline Davis Smith's special interest was the Hayes Taylor YMCA, where she was a major fund-raiser; her goal was to see the new Hayes Taylor YMCA completed; and

Whereas, Angeline Davis Smith was also a past member of the Board of Trustees of North Carolina A & T State University and a past member of the Board of Visitors of Guilford College; and

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Whereas, Angeline Davis Smith was a member of Alpha Kappa Alpha Sorority for forty years and a life member of the NAACP; and

Whereas, Angeline Davis Smith was named Citizen of the Year by the City of Greensboro in 1976, awarded the Distinguished Alumnus distinction from Benedict College in 1981, inducted into the Order of The Long Leaf Pine by Governor James B. Hunt in 1982, named Lady of the Year three times by the NAACP and once by the Greensboro Lion's Club, and presented with the Sojourner Truth Award by the National Association of Negro Business and Professional Women in 1984; and

Whereas, in 1988, Angeline Davis Smith and her husband, Dr. S. Cooper Smith, received the Brotherhood Citation Award of the Greensboro Chapter of the National Conference of Christians and Jews for outstanding leadership and humanitarian service on behalf of civic, cultural, educational, and welfare organizations that enrich the Greensboro community; and

Whereas, this citation was a "token of esteem of fellow citizens of all creeds and races"; and

Whereas, Angeline Davis Smith and her husband worked as a team to ensure the rights of all persons and they gave their time and money unselfishly; and

Whereas, as an example of their generosity, several students were able to attend college with assistance from the Smiths; and

Whereas, Angeline Davis Smith was true to her heritage and gave of herself to better mankind; and

Whereas, Angeline Davis Smith was dedicated, compassionate, and her crowning achievement was that of a devoted wife and a "super" mother and grandmother; and

Whereas, Angeline Davis Smith died on June 19, 1991; and

Whereas, Angeline Davis Smith is survived by her husband, Dr. S. Cooper Smith, a daughter, Dr. Joselyn Bailey, a son, Dr. Joseph Bailey, and a number of grandchildren, great grandchildren, and other relatives;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The North Carolina General Assembly honors the memory of Angeline Davis Smith and expresses the gratitude and appreciation of this State and its citizens for her life and devoted service to North Carolina.

Sec. 2. The North Carolina General Assembly extends its deepest sympathy to the family of Angeline Davis Smith for the loss of their loved one.

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Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Angeline Davis Smith.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.J.R. 1291

RESOLUTION 21

A JOINT RESOLUTION HONORING THE MEMORY OF ROBERT S. SWAIN AND URGING THE RENAMING OF THE MCLEOD CENTER RESIDENTIAL TREATMENT CENTER AS THE ROBERT S. SWAIN RESIDENTIAL TREATMENT CENTER.

Whereas, Senator Robert S. Swain, who cared greatly about the needs of all people, was aware of the lack of facilities throughout the State and especially in the western region for treatment for alcohol and substance abuse; and

Whereas, Senator Robert S. Swain was a long-time advocate for treatment services for alcohol and substance abusers; and

Whereas, Senator Robert S. Swain served on the board of First Step Farm, a local alcohol treatment center; and

Whereas, Senator Robert S. Swain single-handedly located a model treatment program for alcohol and substance abusers in the western region and spearheaded its development into the McLeod Center Residential Drug Program, administered by the Blue Ridge Mental Health, Developmental Disabilities, and Substance Abuse Program;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of Robert S. Swain and most strongly urges the board of the Blue Ridge Mental Health, Developmental Disabilities, and Substance Abuse Program to rename the McLeod Center Residential Treatment Center as the Robert S. Swain Treatment Center, in honor of Senator Robert S. Swain.

Sec. 2. A certified copy of this resolution shall be delivered to the board of the Blue Ridge Mental Health, Developmental Disabilities, and Substance Abuse Program, the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and the family of Senator Robert S. Swain.

Sec. 3. This resolution is effective upon ratification.

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In the General Assembly read three times and ratified this the 4th day of July, 1991.

S.J.R. 957

RESOLUTION 22

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CARL WILLIAM RULLMAN, SR., FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Carl William Rullman, Sr. was born on July 11, 1907, in Aurora, Indiana, to John Henry Rullman and Anna Katherine Riese Rullman; and

Whereas, Carl William Rullman, Sr. graduated from Concordia College in River Forest, Illinois, in 1931, received a bachelor of arts degree from Lenoir-Rhyne College in 1935, and attended graduate school at The University of North Carolina; and

Whereas, Carl William Rullman, Sr. was a teacher and principal for a number of years at various schools in North Carolina; and

Whereas, Carl William Rullman, Sr. developed an interest for manufacturing furniture, and began his own business selling and manufacturing furniture in 1943, serving as president and sales representative of the business until he retired in 1979; and

Whereas, Carl William Rullman, Sr. was active in politics, serving as chairman of the Catawba County Republican Party and State Committeeman; and

Whereas, Carl William Rullman, Sr. served as a member of the North Carolina House of Representatives during the 1979 General Assembly and was a member of the Committees on Finance, Human Resources, Local Government I, State Properties, and Water and Air Resources; and

Whereas, Carl William Rullman, Sr. was a member of the Hickory Regional Planning Commission and was active in the Boy and Girl Scouts organizations on the local, county, and regional levels; and

Whereas, Carl William Rullman, Sr. and his wife, Elizabeth Rullman, were awarded the "Community Family of the Year" in 1954; and

Whereas, Carl William Rullman, Sr.'s devotion to the Lutheran Church was evident by his leadership roles as secretary, financial secretary, church council member, school board chairman, building committee chairman, adult Bible class teacher, Parent-Teacher League chairman, evangelism chairman, and, twice, as evangelism president; and

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Whereas, Carl William Rullman, Sr. was a member of the local Lutheran Layman's League, serving as Southeastern District president, Carolinas District president, Lutheran Hour chairman, television chairman, and membership chairman; and

Whereas, Carl William Rullman, Sr. began his involvement with the International Lutheran Layman's League after attending his first international convention in Chicago in 1931, and received the International Lutheran Layman's League Award of Merit in 1984; and

Whereas, Carl William Rullman, Sr. served on the board of governors of the Southeastern District of the Lutheran Church for seven years and on its board of education for two terms, and was a member of the Committee for a Concordia College in the Southeastern District; and

Whereas, Carl William Rullman, Sr. died on January 27, 1990: and

Whereas, Carl William Rullman, Sr. will be remembered by those who knew him as a man devoted to his family, his church, and public service; and

Whereas, Carl William Rullman, Sr. is survived by his wife, Elizabeth Carpenter Rullman, four daughters, Jettie Greenday, Carolyn Good, Denetia Johnson, and Amy Hofman, and five sons, Carl W. Rullman, Jr., Hank Rullman, Cap Rullman, Glenn Rullman, and Andrew Rullman, and other relatives;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly wishes to honor the life and memory of its former member, Carl William Rullman, Sr. and to express its sympathy to the family and friends of Carl William Rullman, Sr. for the loss of their loved one and friend.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Carl William Rullman, Sr.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.J.R. 1302

RESOLUTION 23

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF SIPPION BURTON, JR., CIVIL RIGHTS LEADER.

Whereas, when in the course of human history, certain individuals are observed to have significantly and profoundly

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influenced their community and State for the better, it is appropriate to commemorate their lives with appreciation and honor; and

Whereas, though the qualities of strength and gentleness are commonly admired and desired, it is a rare individual who abundantly displays both virtues, and both were outstanding characteristics of Sippio Burton, Jr.; and

Whereas, Sippio Burton, Jr., son of the late Sippio Burton, Sr. and the late Sally Hodges Burton, was born on July 10, 1915, in Cumberland County; and

Whereas, Sippio Burton, Jr. spent his early years in Southern Pines and in South Carolina, where he lived with his foster father, Reverend P.W. Toney; and

Whereas, Sippio Burton, Jr. graduated from the Chester County School System in South Carolina and attended Brainard Junior College in Chester, South Carolina; and

Whereas, Sippio Burton, Jr. proudly served his country in the United States Army from February 28, 1942 until February 10, 1946; and

Whereas, after his military service, Sippio Burton, Jr. returned to Cumberland County, where he established the Burton Barber Shop; and

Whereas, Sippio Burton, Jr. distinguished himself as a civil rights leader; and

Whereas, Sippio Burton, Jr.'s concern and compassion for those less fortunate were constantly evident; and

Whereas, the rights of all people in general were a major concern of his efforts; and

Whereas, in stature Sippio Burton, Jr. was big, but in life, gentle, kind, caring, always fighting for the underdog; and

Whereas, Sippio Burton, Jr. served as president of the Fayetteville Chapter of the National Association for the Advancement of Colored People, during some of the most turbulent years of the civil rights movement; and

Whereas, Sippio Burton, Jr. helped to promote better opportunities for minorities in the areas of employment, education, housing, and health care, and was involved in the case that eventually lead to greater minority participation in the electoral process on the local and State levels; and

Whereas, Sippio Burton, Jr. provided leadership in a positive fashion and was opposed to militancy, yet determined to help others in need; and

Whereas, Sippio Burton, Jr. was admired and respected by all members of his community; and

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Whereas, Sippio Burton, Jr. was an active member of the Spout Springs Presbyterian Church, where he served as elder and church treasurer; and

Whereas, Sippio Burton, Jr. died on December 21, 1989; and

Whereas, Sippio Burton, Jr. is survived by his wife, Sadie Burton, his son, Lewis M. Burton, his daughter, Marion Faye Williams, and a host of other relatives; and

Whereas, Sippio Burton, Jr. will be remembered as a devoted family man, a great civil rights leader, and a true humanitarian:

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly expresses its deep appreciation for the life of Sippio Burton, Jr. and recognizes his contributions and accomplishments in the area of civil rights.

Sec. 2. The General Assembly extends its deepest sympathy to the family and friends of Sippio Burton, Jr. for the loss of this fine North Carolinian.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Sippio Burton, Jr.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1991.

H.J.R. 1305

RESOLUTION 24

A JOINT RESOLUTION HONORING THE MEMORY OF THE EARLY SCOTTISH SETTLERS OF NORTH CAROLINA WHO HAVE MADE SIGNIFICANT CONTRIBUTIONS TO THE GROWTH OF THIS STATE AND COUNTRY ON THE OCCASION OF THE 1991 GRANDFATHER MOUNTAIN HIGHLAND GAMES.

Whereas, North Carolina was one of the first colonies to receive settlers from Scotland in the seventeenth century and has continued to welcome Scottish immigrants and their cultures from the Borders, the Lowlands, and the Highlands of Scotland with open and warm arms to this very day; and

Whereas, many North Carolinians of Scottish descent fought bravely for liberty and freedom in the American War of Independence; and

Whereas, the names of many communities and families across North Carolina are constant reminders of the deep Scottish heritage of the State and the contributions that heritage has made to the State; and

Resolutions — 1991

Whereas, Grandfather Mountain in North Carolina has become the location for the largest celebration in America of Scottish tradition; and

Whereas, many members of the Scottish nobility, who are leaders of the Scottish Clans and whose members have contributed to the growth of North Carolina for over 300 years, accept invitations to be the Honored Guests at the Grandfather Mountain Highland Games in order to sustain and support the historic, cultural, and economic ties between North Carolina and Scotland; and

Whereas, this year's Honored Guests at Grandfather Mountain are the Earl and Countess of Dalkeith; and

Whereas, the Earl of Dalkeith is Vice President of the Scottish Opera; Vice President of the Royal Smithfield Club in London; Chairman of the Southwest Region of the Nature Conservancy Council of Scotland; a member for Scotland of the Independent Tele Vision Commission; a member of the Board of Directors of Buccleuch Heritage Trust; a patron of the Border Arts Festival; and President of the Roxburgh Singers; and

Whereas, Lord Dalkeith is the eldest son of the Duke of Buccleuch and Queensberry, K.T., Her Royal Majesty's Lord Lieutenant for Roxburgh, Ettrick, and Lauder, and Chief of Clan Scott; and

Whereas, the Countess of Dalkeith is Chair of the Scottish Ballet and the daughter of the Marquis of Lothian, Chief of Clan Kerr;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of the early Scottish settlers of North Carolina who have made significant contributions to the growth of this State and country.

Sec. 2. The General Assembly honors acceptance by the Earl and Countess of Dalkeith of the invitation to be the Honored Guests at the 1991 Grandfather Mountain Highland Games and extends to both of them the warmest hospitality of all North Carolinians during their visit in this State.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to be presented to Lord and Lady Dalkeith on the occasion of the luncheon honoring them on July 12, 1991, sponsored by the Clan Scott Society of the Americas, the Kerr Family Association, and the Caledonian Foundation.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1991.

S.J.R. 964

RESOLUTION 25

**A JOINT RESOLUTION HONORING THE LIFE AND MEMORY
OF CLAUDE KITCHIN JOSEY, FORMER MEMBER OF THE
GENERAL ASSEMBLY.**

Whereas, Claude Kitchin Josey was born in Scotland Neck on September 6, 1923, to Robert Carey Josey, Jr. and the former Anna Kitchin; and

Whereas, Claude Kitchin Josey attended Wake Forest College from 1941 to 1942, and received a BS degree from the United States Military Academy in 1945 and a JD degree from the Duke University School of Law in 1956; and

Whereas, Claude Kitchin Josey proudly served his country in the United States Army from 1945 to 1953, where he achieved the rank of captain and was awarded the Purple Heart and the Distinguished Service Cross; and

Whereas, Claude Kitchin Josey served as an assistant solicitor of the Superior Court of Guilford County from 1958 to 1959; was a partner in the law firm of Douglas, Ravenel, Josey, and Hardy from 1959 to 1966; and practiced law in Enfield in the firm of Hux, Branch and Josey before establishing an office in Scotland Neck; and

Whereas, at the time of his death, Claude Kitchin Josey was a senior partner in the firm of Josey, Josey and Hanudel with offices in Scotland Neck and Roanoke Rapids; and

Whereas, Claude Kitchin Josey held a number of offices in several professional organizations, including President of the Halifax County Bar Association, President of the Sixth Judicial District Bar Association, and Chair of the Sixth Judicial District Board of Law Examiners; and

Whereas, Claude Kitchin Josey was a member of the North Carolina Bar Association and the American Bar Association; and

Whereas, Claude Kitchin Josey served with honor and distinction in the North Carolina House of Representatives during the 1971 and 1973 Sessions of the General Assembly, and served as Speaker Pro Tempore during the 1975 Session; and

Whereas, while a member of the House of Representatives, Claude Kitchin Josey served on a number of committees, including Constitutional Amendments as Chair, Public Education, Highway Safety, Judiciary, Alcoholic Beverage Control, State Government Reorganization, Appropriations, Finance, Courts and Judicial Districts, and Congressional Reapportionment; and

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Whereas, Claude Kitchin Josey served as Chair of the Democratic Executive Committee of Guilford County and was appointed to the Local Government Commission in 1977; and

Whereas, Claude Kitchin Josey was a well respected member of his community, serving as a member of the Board of Trustees of Halifax County Community College, and as a member of the Board of Trustees of Wake Forest University and the Wake Forest Athletic Council; and

Whereas, Claude Kitchin Josey was a member of the First Baptist Church of Scotland Neck; and

Whereas, Claude Kitchin Josey is survived by his wife, Roberta Linnell Bruce Josey, his children, Roberta Josey Kemp, Claude Kitchin Josey, Jr., and Robert Bruce Josey, and several grandchildren; and

Whereas, the General Assembly wishes to honor the memory of Claude Kitchin Josey and recognize his many years of public service to the people of this State and of the United States;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the life and memory of Claude Kitchin Josey and expresses the deep gratitude and appreciation of this State for his life and service.

Sec. 2. The General Assembly extends its deepest sympathy to the family of Claude Kitchin Josey for the loss of its distinguished member.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Claude Kitchin Josey.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1991.

H.J.R. 1308

RESOLUTION 26

A JOINT RESOLUTION HONORING THE MEMORY OF JOSEPH CALDWELL AND COLONEL WILLIAM LENOIR ON THE SESQUICENTENNIAL OF CALDWELL COUNTY.

Whereas, Caldwell County is celebrating its sesquicentennial in 1991; and

Whereas, Caldwell County was formed from Burke and Wilkes Counties in 1841; and

Whereas, Caldwell County was named in honor of Joseph Caldwell, the first president of the University of North Carolina; and

Resolutions — 1991

Whereas, some of the early inhabitants of Caldwell County nicknamed the area they settled as "The Happy Valley" because of its beautiful terrain; and

Whereas, the early settlers of Caldwell County included Germans, Scotch-Irish, and English from Virginia and Pennsylvania and their slaves from Africa; and

Whereas, these settlers were hunters, farmers, and crafts people; and

Whereas, one of Caldwell County's most notable residents was Colonel William Lenoir, a revolutionary war hero, who was a successful farmer, served as president of the Council of State, a member of both the State Senate and House of Representatives, and the first president of the board of trustees of the University of North Carolina; and

Whereas, Caldwell County grew from an agricultural community to an industrialized one; and

Whereas, today Caldwell County produces poultry, dairy products, hogs, furniture, apparel, textiles, hosiery, mirrors, pianos, and gravel; and

Whereas, most of the people of Caldwell County are honest, hardworking, and loyal citizens;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of Joseph Caldwell and the memory of Colonel William Lenoir, and joins the citizens of Caldwell County in celebrating its sesquicentennial.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the Caldwell County Board of County Commissioners.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1991.

S.J.R. 966

RESOLUTION 27

A JOINT RESOLUTION HONORING THE MEMBERS OF THE 1792 GENERAL ASSEMBLY, THE NINE CAPITAL COMMISSIONERS, AND ISAAC HUNTER ON THE 200TH ANNIVERSARY OF THE FOUNDING OF THE CITY OF RALEIGH AS THE CAPITAL OF NORTH CAROLINA.

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Whereas, between 1777 and 1790, members of the General Assembly introduced without success several bills to establish a permanent seat of government; and

Whereas, the Constitutional Convention of 1788 addressed this issue and adopted an ordinance providing that the location of the capital be established within 10 miles of the Isaac Hunter Plantation in Wake County; and

Whereas, on January 5, 1792, the General Assembly ratified the action of the Constitutional Convention and permanently established the seat of government for the State of North Carolina in Wake County; and

Whereas, a legislative commission, consisting of eight members representing the eight judicial districts of the State and one at-large member, was assigned to select a site in Wake County for a State capital, survey and lay off a town, sell lots to prospective citizens, and determine a particular site for a State house; and

Whereas, on March 20, 1792, five of the nine commissioners met at Isaac Hunter's Tavern in Wake County to begin their task; and

Whereas, the commission viewed several sites and, on April 2, 1792, purchased 1,000 acres of the Joel Lane Plantation and later completed its mission; and

Whereas, the General Assembly ratified the actions of the commission and named the city Raleigh on December 31, 1792; and

Whereas, 1992 will mark the 200th anniversary of the founding of the City of Raleigh as the capital of North Carolina; and

Whereas, a planning committee has been actively preparing a year-long celebration to mark the significance of this historic occasion;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the memory of the members of the 1792 General Assembly, the nine Capital Commissioners, and Isaac Hunter on the 200th anniversary of the founding of the City of Raleigh as the capital of North Carolina.

Sec. 2. The General Assembly encourages the citizens of this State to participate in all of the activities planned for this historic occasion.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

S.J.R. 949

RESOLUTION 28

A JOINT RESOLUTION CONGRATULATING THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND THE NORTH CAROLINA COMMISSIONERS.

Whereas, one hundred years ago the states and the legal profession began the unique partnership called the National Conference of Commissioners on Uniform State Laws; and

Whereas, in 1892, seven states sent representatives to the first national conference; and

Whereas, North Carolina first participated in the year 1906; and

Whereas, by 1912, every state in the United States was participating in the conference; and

Whereas, the list of distinguished uniform law commissioners presently serving for North Carolina includes:

Marion W. Benfield	Winston-Salem, N.C.	1990-
Rhoda B. Billings	Winston-Salem, N.C.	1985-
Richard L. Braun	Buies Creek, N.C.	1985-
Florence Nelson Crisp	Greenville, N.C.	1987-
Robinson O. Everett	Durham, N.C.	1962-68, 1969-73, 1977-
Carlton E. Fellers	Raleigh, N.C.	1985-
Elmer R. Oettinger	Chapel Hill, N.C.	1973-
Steven P. Rader	Washington, N.C.	1985-
Floyd M. Lewis, Associate	Raleigh, N.C.	1991-; and

Whereas, the following individuals have served in the years indicated as Commissioners or Associate Commissioners denoted by asterisks from North Carolina:

Isaac Mayo Bailey	Raleigh, N.C.	1943-50
James M. Baley, Jr.	Asheville, N.C.	1985-88
Kemp D. Battle	Rocky Mount, N.C.	1937
J. Crawford Biggs	Durham, N.C.	1907-39
Joel K. Bourne	Tarboro, N.C.	1971-72
M.S. Breckenridge	Chapel Hill, N.C.	1929-36
James F. Bullock	Raleigh, N.C.	1966-72
Lewis G. Bulwinkle*	Raleigh, N.C.	1955
J. Wilbur Bunn	Raleigh, N.C.	1959
F. Kent Burns*	Raleigh, N.C.	1956-57
Fabius H. Busbee	Raleigh, N.C.	1906-07
W.P. Bynum	Greensboro, N.C.	1920-25
James Coleman	Hendersonville, N.C.	1974

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Harold D. Coley, Jr.*	Raleigh, N.C.	1961-63
Sidney S. Eagles, Jr.	Raleigh, N.C.	1967-70,*
		1971-85
C. Allen Foster	Greensboro, N.C.	1985-86
George A. Goodwyn*	Raleigh, N.C.	1965
Laurence S. Graham	Greenville, N.C.	1977-85
W.M. Hendren	Winston-Salem, N.C.	1926-36
Edward B. Hipp*	Raleigh, N.C.	1951-52
H.C. Horack	Durham, N.C.	1938
George W. Jackson	Roxboro, N.C.	1974-76
Emil F. Kratt	Charlotte, N.C.	1975-76
Henry M. London*	Raleigh, N.C.	1929-39
Harry W. McGailliard	Raleigh, N.C.	1947-50,*
		1952-55
Ralph R. McMillan	Charlotte, N.C.	1985-89
Cama C. Merritt	Mt. Airy, N.C.	1977
Bert M. Montague	Raleigh, N.C.	1956
Ralph Moody	Raleigh, N.C.	1960-64
Charles A. Moore	Asheville, N.C.	1909-13
J.D. Murphy	Asheville, N.C.	1914-23
Charles J. Murray*	Raleigh, N.C.	1981-90
William L. Osteen	Greensboro, N.C.	1985-86
Frank M. Parker	Asheville, N.C.	1951-54
John R. Parker	Clinton, N.C.	1974-76
J. Lindley Patterson	Winston-Salem, N.C.	1907-19
Charles G. Powell*	Raleigh, N.C.	1953-54
Ann Reed*	Raleigh, N.C.	1974-80
Meyressa Schoonmaker	Winston-Salem, N.C.	1982-85
John F. Shuford	Asheville, N.C.	1955-57
Robert A. Spence	Smithfield, N.C.	1962-66
Fred I. Sutton	Kinston, N.C.	1940-70
C.W. Tillett, Jr.	Charlotte, N.C.	1926-28
John W. Twisdale*	Raleigh, N.C.	1966
Russell G. Walker, Jr.	Asheboro, N.C.	1971-72,*
		1973,
		1977-85
Acie L. Ward	Raleigh, N.C.	1977-85
Harold L. Waters*	Raleigh, N.C.	1964
Charles M. Welling	Charlotte, N.C.	1968-74,
		1977-85
Winifred T. Wells	Wallace, N.C.	1977-82
Kingsland Van Winkle	Asheville, N.C.	1939-50
Thomas L. Young*	Raleigh, N.C.	1958-60;
and		

Resolutions — 1991

Whereas, the State has adopted 53 uniform model acts over the long history of its participation in the National Conference of Commissioners on Uniform State Laws, including:

Anatomical Gift Act
Arbitration Act
Child Custody Jurisdiction Act
Commercial Code
Controlled Substances Act
Criminal Extradition Act
Declaratory Judgments Act
Durable Power of Attorney Act
Fiduciaries Act
Gifts to Minors Act
Limited Partnership Act
Narcotic Drug Act
Partnership Act
Premarital Agreement Act
Principal and Income Act
Reciprocal Enforcement of Support Act
Simultaneous Death Act
Transfers to Minors Act
Warehouse Receipts Act; and

Whereas, the uniform law commissioners serve without compensation; and

Whereas, the uniform law commissioners dedicate their contributions to the jurisprudence of the states as part of their public service obligations as members of the bar; and

Whereas, the State of North Carolina and all the other states would be poorer without them;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly congratulates the National Conference of Commissioners on Uniform State Laws and the North Carolina uniform law commissioners for 100 years of consistent contribution to the development of State law, of constant service to the citizens of this State and all the states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands, and of unwavering commitment to the principle of uniformity of law in those subject areas of law in which uniformity best serves the states and their citizens.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF THOMAS MEREDITH, ON THE OCCASION OF THE CENTENNIAL OF THE GRANTING OF THE CHARTER TO BAPTIST FEMALE UNIVERSITY (MEREDITH COLLEGE) BY THE NORTH CAROLINA GENERAL ASSEMBLY.

Whereas, Thomas Meredith was valedictorian of the graduating class of the University of Pennsylvania in 1816; and

Whereas, Thomas Meredith came to Edenton in 1817 as a missionary to North Carolina; and

Whereas, Thomas Meredith founded and began regular publication of the Biblical Recorder in 1835 in New Bern and moved it to Raleigh in 1838; and

Whereas, Thomas Meredith served on a committee appointed by the North Carolina Baptist State Convention at its 1835 session held at Union Camp Ground in Rowan County to study the establishment of a female seminary; and

Whereas, Thomas Meredith continued to serve on that committee which in 1836 acknowledged "the great importance of female education" and urged "'upon the Baptist public generally to avail themselves, as far as their circumstances will allow, of the facilities now in existence for cultivating the minds of their daughters in order to raise up a generation of women who shall employ all that influence and control which are conceded to them in every civilized and Christian country, on the side of liberal sentiment and to sway the minds of men in behalf of virtue and religion;" and

Whereas, Thomas Meredith authored a resolution adopted by the Baptist State Convention on November 6, 1838, which argued in part, "that there are but few female schools of much standing in our State --... that our people are therefore compelled either to keep their daughters at home uneducated, or send them to other states, at an enormous expense and much inconvenience--constitute, in the view of your committee, sufficient evidence that a seminary adapted to the wants of our people, and located in central part of the State, is an object much to be desired;" and

Whereas, Thomas Meredith continued to argue for the cause of the establishment of a female seminary in the conventions which followed and in the pages of the Biblical Recorder, which he edited for 20 years; and

Whereas, Thomas Meredith argued that cause until his death in 1850; and

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Whereas, Thomas Meredith's dream was realized when the 1891 North Carolina State Legislature issued a charter on February 27 for Baptist Female University; and

Whereas, Baptist Female University was opened in 1899, its name changed to Baptist University for Women in 1904, and changed once more in 1910 to Meredith College in honor of Thomas Meredith; and

Whereas, Meredith College for 100 years has held steadily to the ideals of academic integrity and religious influence cherished by its founders, trustees, faculty, staff, alumnae, and students; and

Whereas, Meredith College honors its proud heritage and expands its vision as it enters a second century of providing scholarly and spiritual education for women;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the life and memory of Thomas Meredith, whose actions, example, ideals, and deeds led to the founding of Meredith College and joins in commemorating the centennial celebration of the issuance of its charter.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the President of Meredith College.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

H.J.R. 1312

RESOLUTION 30

A JOINT RESOLUTION SETTING THE TIME FOR ADJOURNMENT OF THE 1991 GENERAL ASSEMBLY TO MEET IN 1992, AND LIMITING THE SUBJECTS THAT MAY BE CONSIDERED IN THAT SESSION.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. At 11:20 p.m. on Tuesday, July 16, 1991, the House of Representatives and the Senate shall adjourn to reconvene at noon on Tuesday, May 26, 1992. During that session only the following matters may be considered:

- (1) Bills directly and primarily affecting the State budget for fiscal year 1992-93, provided that no appropriations or finance bill may be introduced in the House of Representatives or filed for introduction in the Senate after Tuesday, June 2, 1992, provided that any such measure submitted to the Bill Drafting Division of the Legislative

Services Office by 4:00 p.m. on that date and filed for introduction in the Senate or introduced in the House of Representatives by 5:00 p.m. on Thursday, June 4, 1992, shall be treated as if it had met the deadlines established by this subdivision.

- (2) Bills introduced in 1991 and having passed third reading in 1991 in the house in which introduced, received in the other house, and not disposed of in the other house by tabling, unfavorable committee report, indefinite postponement, or failure to pass any reading, and does not violate the rules of either body.
- (3) Bills implementing the recommendations of study commissions authorized or directed to report to the 1992 Session. Any bills authorized by this subdivision must be filed for introduction in the Senate or introduced in the House of Representatives no later than 5:00 p.m. on Wednesday, June 3, 1992.
- (4) Any local bill introduced in the House of Representatives or filed for introduction in the Senate by 5:00 p.m. on Tuesday, June 2, 1992, and accompanied by a certificate signed by the principal sponsor stating that no public hearing will be required or asked for by a member on the bill, the bill is noncontroversial, and the bill is approved for introduction by each member of the House of Representatives and Senate whose district includes the area to which the bill applies.
- (5) Selection, appointment or confirmation of members of State boards and commissions as required by law, including the filling of vacancies of positions for which the appointees were elected by the General Assembly upon recommendation of the Speaker of the House of Representatives, President of the Senate, or President Pro Tempore of the Senate.
- (6) Any matter authorized by joint resolution passed during the 1992 Session by two-thirds majority of the members of the House of Representatives present and voting and by two-thirds majority of the members of the Senate present and voting. A bill or resolution filed in either house under the provisions of this subsection shall have a copy of the ratified enabling resolution attached to the jacket before filing for introduction in the Senate or introduction in the House of Representatives.
- (7) Any bills primarily affecting any State or local pension or retirement system, introduced in the House of

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Representatives or filed for introduction in the Senate by 5:00 p.m. on Tuesday, June 2, 1992.

- (8) Joint resolutions, House resolutions, and Senate resolutions pertaining to Section 5(10) of Article III of the Constitution of North Carolina.
- (9) A joint resolution adjourning the 1991 Regular Session, *sine die*.


Sec. 2. The Speaker of the House of Representatives or the President Pro Tempore of the Senate may authorize appropriate committees or subcommittees of their respective houses to meet during the interim between sessions to review matters related to the State budget for the 1991-93 biennium, to prepare reports, including revised budgets, or to consider any other matters as the Speaker of the House of Representatives or the President Pro Tempore of the Senate deems appropriate, except that no committee or subcommittee of a house may consider, after the date of adjournment provided in Section 1 of this resolution and before the date of reconvening provided in Section 1 of this resolution, any bill, or proposed committee substitute for such bill, which originated in the other house. A conference committee may meet in the interim upon approval by the Speaker of the House of Representatives or the President Pro Tempore of the Senate.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

STATE OF NORTH CAROLINA
DEPARTMENT OF STATE,
RALEIGH, JULY 16, 1991

I, RUFUS L. EDMISTEN, Secretary of State of North Carolina, hereby certify that the foregoing volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the office of the Secretary of State.

A large, stylized handwritten signature in black ink that reads "Rufus L. Edmisten". The signature is written in a cursive style with a large initial 'R' and 'E'.

Secretary of State

APPENDIX

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State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 124 GOVERNOR'S TASK FORCE ON PRISON CONSTRUCTION AND CONSOLIDATION

WHEREAS, an increasing inmate population has placed a tremendous burden upon our State correctional system, and

WHEREAS, the North Carolina General Assembly has appropriated \$75 million for new prison construction, and

WHEREAS, the General Assembly has directed that the question of issuance of \$200 million of general obligation bonds for new prison construction be placed on the November 1990 ballot, and

WHEREAS, I have concluded that it is in the State's best interest to establish a task force for the purpose of studying prison construction economies and consolidation,

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment. There is hereby established the Governor's Task Force on Prison Construction and Consolidation.

Section 2. Membership. The task force shall consist of seven members to be appointed by the Governor and who shall serve

at the pleasure of the Governor. The chairperson of the task force shall be selected from among the membership by the Governor and shall serve as chairperson at the pleasure of the Governor. The chairperson shall coordinate the activities of the task force.

Section 3. Purpose. The purpose of the task force is to study current prison facility construction costs and methods of construction, placement, costs of operation, support personnel/population ratios, and any other issues which may prove helpful in reaching a determination as to whether or not smaller prison units can be consolidated into larger prison units for more efficient operation and the most economical methods of construction of new facilities.

Section 4. Reporting. The task force shall report the findings of its study to the Governor no later than February 1, 1991.

Section 5. Administrative Support. Administrative support for the task force shall be provided by the Department of Correction.

Section 6. Expenses. Expenses shall be paid out of the Department of Correction's budget. Those members of the task force who are State employees shall receive travel and subsistence in accordance with N.C.G.S. 138-6. Those members of the task force who are not State employees shall receive travel and subsistence in accordance with N.C.G.S. 138-5. Those members of the task force who are also members of the General Assembly shall receive travel and subsistence in accordance with N.C.G.S. 120-3.1(a)(2) - (a)(4).

No per diem will be paid to any task force member.

Section 7. Duration. This order shall be effective immediately and shall remain in effect until the purpose of the task force is accomplished.

Done in Raleigh, North Carolina this the 18th day of September, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 125 AMENDMENT OF EXECUTIVE ORDER NUMBER 71

By the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, it is ORDERED:

Executive Order Number 71, which established the Governor's Task Force on Rail Passenger Service and which was extended by Executive Order Number 94, is amended as follows:

In Section 1, the second sentence is amended to read, "The Task Force shall consist of twenty members appointed by the Governor to serve at the pleasure of the Governor."

In Section 1, the fifth sentence is amended to read, "The Secretary of Transportation or his designee shall serve as an ex-officio member and shall not be included in the twenty members to be appointed by the Governor."

This order shall be effective immediately.

Done in Raleigh, North Carolina this the 18th day of
September 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Refus L. Edmisten
Refus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 126 GOVERNOR'S HIGHWAY BEAUTIFICATION COUNCIL

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment. There is hereby established the Governor's Highway Beautification Council.

Section 2. Membership. The Council shall consist of 10 members to be appointed by the Governor and who shall serve at the pleasure of the Governor. Seven members shall be appointed to represent each of the following geographic areas which are comprised of the following highway divisions:

- (1) one member from division 1 and division 2
- (2) one member from division 3 and division 4
- (3) one member from division 5 and division 6
- (4) one member from division 7 and division 8
- (5) one member from division 9 and division 10
- (6) one member from division 11 and division 12
- (7) one member from division 13 and division 14

Three members shall represent the State at large.

Section 3. Chairperson. The chairperson shall be chosen from among the membership of the Council by the Governor and shall serve as chairperson at the pleasure of the Governor. The chairperson shall coordinate the activities of the Council.

Section 4. Purpose. The purpose of the Council is to:

- (1) provide for citizens' input to the Department of Transportation on new and existing highway beautification programs;
- (2) make recommendations to the Department of Transportation regarding expenditures for the planting of wildflowers and/or other flora along the State highways;
- (3) promote citizens' participation in the department's volunteer beautification programs; and
- (4) provide information to the citizens of North Carolina concerning highway beautification issues.

Section 5. Administrative Support. Administrative support for the Council shall be provided by the Department of Transportation's Beautification Program staff.

Section 6. Expenses. Expenses shall be paid out of the Department of Transportation's budget. Those members of the Council who are State employees shall receive travel and subsistence in accordance with N.C.G.S. 138-6. Those members of the Council who are not State employees shall receive travel and subsistence in accordance with N.C.G.S. 138-5. Those members of the Council who are also members of the General Assembly shall receive travel and subsistence in accordance with N.C.G.S. 120-3.1(a)(2) - (4).


No per diem will be paid to any council member.

Section 7. Effective Date. This order shall be effective immediately.

Done in Raleigh, North Carolina this the 18th day of September, 1990.


James G. Martin
Governor

ATTEST.


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 127
AMENDMENT AND EXTENSION OF EXECUTIVE ORDER
NUMBER 1 ESTABLISHING THE NORTH
CAROLINA BOARD OF ETHICS

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Executive Order Number 1, establishing the North Carolina Board of Ethics, as amended by Executive Order Number 30 and extended by Executive Orders Number 33 and 82, is hereby amended to include all members of boards, commissions, and councils within the executive branch that exercise the sovereignty of the State and/or advise the heads of principal departments, irrespective of appointing authority. No appointee to a commission, board, or council subject to this order shall be permitted to participate in any official matters until he or she has filed a Statement of Economic Interest with the North Carolina Board of Ethics.

Executive Order Number 1 is hereby extended for a period of 5 years from this date.

Done in Raleigh, North Carolina, this the 29th day of
October, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 128 AMENDMENT OF EXECUTIVE ORDER NUMBER 127

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Executive Order Number 127 amending Executive Order Number 1 is amended as follows:

Executive Order Number 127 is prospective in application to appointees of executive branch boards, commissions or councils whose initial appointment or reappointment occurs on or after the date of the order. Members of executive branch boards, commissions or councils currently serving will have 90 days from the date of the order to file their Statements of Economic Interest with the North Carolina Board of Ethics.

Done in Raleigh, North Carolina this the 1st day of
November, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 129
AMENDING EXECUTIVE ORDER NUMBER 121
GOVERNOR'S MINORITY, FEMALE AND DISABLED-OWNED BUSINESSES
CONSTRUCTION CONTRACTORS ADVISORY COMMITTEE

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Executive Order Number 121 is amended as follows:

Section 4. Membership. The membership of the Committee shall be comprised of at least the following 17 members to be appointed by, and serve at the pleasure of the Governor...

(D) The Secretary of the Department of Administration or his designee and the Secretary of the Department of Transportation or his designee will serve as ex-officio, non-voting members.

This order is effective immediately.

Done in Raleigh, North Carolina, this the 14th day of
December, 1990.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 130 SUPPLEMENTING EXECUTIVE ORDER NUMBER 114

Reference is made to Executive Order Number 114 dated May 8, 1990.

It has been determined from the continuing survey of the collection of revenues for the 1990-91 fiscal year made by the Office of State Budget and Management that unless economies are effected in State expenditures in addition to those heretofore effected, the State will incur a deficit in the administration of its General Fund budget.

THEREFORE, pursuant to authority granted to the Governor by Article III, Sec. 5(3) of the Constitution and to fulfill the duties required of the Governor thereunder:

1. It is found as a fact that based on General Fund revenue collections through December 31, 1990, and projections for the collection of these revenues through June 30, 1991, actual receipts of General Fund revenues for the 1990-91 fiscal year will not meet those anticipated and budgeted by the 1989 General Assembly.

2. From this fact it is determined and concluded that unless additional economies in State expenditures are made, the State's General Fund expenditures will exceed General Fund receipts for the biennium.

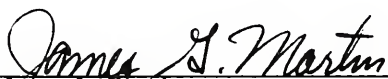
3. To insure that a deficit is not incurred in the administration of the General Fund budget for the 1989-91 biennium, the following additional

economies in State expenditures are found to be necessary and are hereby
ORDERED:

Section 1. Effective January 9, 1991, and until further notice, except those for which prior commitments have been made, vacant positions in those agencies of State Government funded by General Fund appropriations may not be filled, without prior written approval of the Office of State Budget and Management.

Section 2. This Order shall become effective at 10:00 a.m., January 9, 1991, and shall remain in effect until rescinded by further Executive Order.

Done at 10:00 a.m., in the Capital City of Raleigh, North Carolina,
this 9th day of January, 1991.


James G. Martin
Governor

ATTEST:


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 131
AMENDMENT TO EXECUTIVE ORDER NUMBER 15
JUVENILE JUSTICE PLANNING COMMITTEE

WHEREAS, The Juvenile Justice Planning Committee was established by Executive Order Number 15 on June 28, 1985, and extended by Executive Order Number 94 on July 14, 1989; and

WHEREAS, In order to meet the Federal guidelines contained in the Federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended, it is now necessary to alter the membership requirements of that committee;

THEREFORE, by authority vested in me as Governor by the laws and the Constitution of North Carolina, IT IS ORDERED:

The first sentence of Executive Order Number 15, Section 1, is amended to read:

"The membership of the Juvenile Justice Planning Committee, an adjunct committee of the Governor's Crime Commission, shall consist of twenty-five (25) members selected as follows:"

Section 1(b) of Executive Order Number 15 is amended to read as follows:

"The following nine members shall be appointed by the Secretary of the Department of Crime Control and Public Safety and shall serve at his pleasure:

- i) a representative of a business group or a business that employs youth;
- ii) a representative of private organizations, including those with a special focus on maintaining and strengthening the family unit, or those representing parents or parent groups, or those concerned with delinquency prevention and treatment and with neglected or dependent children, or those concerned with the quality of juvenile justice, education, or social services for children;
- iii) a representative of an organization that utilizes volunteers to work with delinquents or potential delinquents;
- iv) a representative of a community-based delinquency prevention or treatment program;
- v) a youth worker involved with alternative youth programs;
- vi) a person with special experience and competence in addressing the problems of the family, school violence and vandalism, and learning disabilities; and
- vii) three members under the age of 24, and who have been or are currently under the jurisdiction of the juvenile justice system."

All other provisions of Executive Order Number 15 remain in force.

This order shall be effective immediately and shall remain in effect until June 30, 1993.

Done in Raleigh, North Carolina this the 7th day of February, 1991.


James G. Martin
Governor

ATTEST:


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 132 ESTABLISHMENT OF GOVERNOR'S COUNCIL ON ALCOHOL AND OTHER DRUG ABUSE

WHEREAS, the Governor's Council on Alcohol and Drug Abuse Among Children and Youth was established by Executive Order Number 23 and was extended by Executive Order Number 64; and

WHEREAS, it has been made known to me that a change in the name and scope of this Council is appropriate;

NOW THEREFORE, By the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 1. ESTABLISHMENT

- (a) There is hereby established a Governor's Council on Alcohol and Other Drug Abuse.
- (b) The Council shall consist of not more than twenty (20) persons who shall be appointed by the Governor. The Governor shall designate the chairperson of the Council. All Council members shall serve at the pleasure of the Governor.
- (c) The persons appointed shall be citizens who have demonstrated interest, involvement or expertise in issues related to prevention, intervention and treatment of alcohol and other drug abuse.

Section 2. FUNCTIONS

- (a) The Council is authorized to meet regularly at the call of the Chairperson, the Governor, or the Secretary of Human Resources.
- (b) In fulfilling its undertaking, the Council shall have the following duties relating to alcohol and other drug abuse issues:
 - (1) Review the General Statutes of North Carolina applicable to substance abuse, including criminal and service delivery legislation and make recommendations concerning needed changes;
 - (2) Review and recommend mechanisms for the coordination of state and local resources for addressing identified needs;
 - (3) Conduct public hearings and advise the Governor and other appropriate state government departments and agency heads of the result and recommendations of the Council;
 - (4) Encourage local areas to identify an existing board, council or commission to mobilize resources to address substance abuse problems;
 - (5) Encourage local boards, councils or commissions to develop an implementation plan to meet identified needs;
 - (6) Assist local boards, councils or commissions in identifying model prevention, intervention and treatment efforts;
 - (7) Encourage program activities that increase public awareness of substance abuse and strategies to decrease the problem; and
 - (8) Other such duties as assigned by the Governor or the Secretary of Human Resources.

Section 3. ADMINISTRATION

- (a) The heads of the State departments and agencies shall, to the extent permitted by law, provide the Council information as may be required by the Council in carrying out the purposes of the Order.
- (b) The Department of Human Resources shall provide staff and support services as directed by the Secretary of Human Resources.

- (c) Members of the Council shall serve without compensation, but may receive reimbursement contingent on the availability of funds for travel and subsistence expenses in accordance with state guidelines and procedures.
- (d) The Council shall be funded by the Department of Human Resources and contributions received from the private sector.

Section 4. REPORTS

- (a) The Council shall present an annual report to the Governor and the Secretary of Human Resources.
- (b) Reports of recommendations may be submitted to the Governor and Secretary of Human Resources as deemed appropriate by the Chairperson.

Section 5. IMPLEMENTATION

The Office of the Secretary of Human Resources will review reports and recommendations and take appropriate action.

Section 6. PRIOR ORDERS

All prior Executive Orders or portions of prior Executive Orders inconsistent herewith are hereby repealed.

This Order is effective this the 22nd day of February, 1991, and shall expire two years from this date unless terminated or extended by further Executive Order.

James G. Martin
James G. Martin
Governor

ATTEST

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 133
EXPANDING THE MEMBERSHIP OF GOVERNOR'S HIGHWAY
BEAUTIFICATION COUNCIL

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

The first sentence of Section 2 of Executive Order Number 126 is amended in part to read, "The Council shall consist of 15 members to be appointed by the Governor and who shall serve at the pleasure of the Governor." The final sentence of Section 2 is amended to read, "Eight members shall represent the State at large."

All other provisions of Executive Order Number 126 shall remain unchanged.

This Order shall be effective immediately.

Done in Raleigh, North Carolina this the 22nd day of
February, 1991.

James G. Martin
James G. Martin
Governor

ATTEST

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NO. 134
GRANTING SPECIAL READJUSTMENT LEAVE
TO EMPLOYEES OF THE STATE WHO HAVE
SERVED WITH THE NATION'S ARMED FORCES
DURING THE PERSIAN GULF CONFLICT

North Carolina is proud of its sons and daughters who have served with the Nation's Armed Forces during the Persian Gulf Conflict. We have prayed for their safety and welcome their return. But that is not enough. We now must do all we can to help make their return to their everyday lives as easy as possible.

Many of those who served in our armed forces during the Persian Gulf Conflict were State employee National Guardsmen and reservists who interrupted their employment with the State and took military leave without pay to perform their military duties. Over the next few months they will be coming home to their families and friends and to resume their State employment. As an employer, the State can ease their transitions from their military to their civilian lives by granting to them a special readjustment leave, with pay, in which to reorder their affairs before returning to work.

THEREFORE, in grateful recognition of all that they have done for us by their service in the Armed Forces of the United States during the Persian Gulf Conflict and pursuant to authority granted

to me as Governor by Article III, Sec. 1 of the Constitution and North Carolina General Statutes §§143A-4 and 143B-4, it is ORDERED:

Section 1. Upon resuming their employment with the State all State employees on military leave without pay from their regular State employment on account of extended active duty with the Armed Forces of the United States during the Persian Gulf Conflict, shall be given 80 hours (10 days) special readjustment leave to be used by such employees prior to returning to work.

Section 2. For the purposes of this Executive Order:

(a) "Persian Gulf Conflict" shall refer to that time beginning August 2, 1990, and ending when this Executive Order is revoked.

(b) "State employees" shall refer to all persons employed by the State or agencies of the State who are paid in whole or in part with State funds, including employees of local education agencies and community colleges.

Section 3. This special readjustment leave shall be in addition to the regular leave earned by such State employees. Any such leave that is not used within twelve months after the recipient has returned to work or prior to his separation from State employment, shall be lost.

Section 4. This special readjustment leave shall be administered by the Office of State Personnel.

Section 5. The following Council of State members are hereby given special recognition for the concurrence and encouragement they have given to me in promulgating this executive order:

James C. Gardner

Lieutenant Governor

Harlan E. Boyles

State Treasurer

John C. Brooks

Commissioner of Labor

Rufus L. Edmisten

Secretary of State

Bobby R. Ethridge

Superintendent of Public Instruction

James A. Graham

Commissioner of Agriculture

James E. Long

Commissioner of Insurance

Edward Renfrow

State Auditor


Lacy H. Thornburg

Attorney General

Special recognition is also given to the State Personnel Commission and Office of State Personnel for their endorsement of the same.

Section 6. This executive order shall be effective immediately and shall continue in effect until revoked by me or my successor.

Done in Raleigh, North Carolina this 7th day of March, 1991.


James G. Martin
Governor

ATTEST:


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR


EXECUTIVE ORDER NUMBER 135
RESCISSION OF EXECUTIVE ORDERS NUMBER 88 AND NUMBER 102
COLUMBUS VOYAGES QUINCENTENARY COMMISSION

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:


The Columbus Voyages Quincentenary Commission is hereby dissolved, and Executive Orders Number 88 and Number 102 are hereby rescinded.

This order shall be effective immediately.

Done in Raleigh, North Carolina this the 19th day of March, 1991.


James G. Martin
Governor

ATTEST:


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 136
ESTABLISHING THE NORTH CAROLINA ADVISORY COUNCIL ON
TELECOMMUNICATIONS IN EDUCATION

WHEREAS, to solve the problems of education we must use all available resources and technologies to their fullest extent; and

WHEREAS, the use of telecommunications can rapidly increase our ability to reach those in need of special courses and technical training; and

WHEREAS, the educational problems in our State require that educators develop or coordinate a plan for the use of telecommunications;

THEREFORE, by the authority vested in me as Governor by the Constitution and Laws of North Carolina, IT IS ORDERED:

Section 1. Establishment. There is hereby established the North Carolina Advisory Council on Telecommunications in Education.

Section 2. Membership. The Advisory Council shall be composed of the following members:

1. The President of the University of North Carolina System;
2. The President of the Department of Community Colleges;
3. The Superintendent of the Department of Public Instruction;
4. The Secretary of the Department of Administration;
5. The Secretary of the Department of Correction;
6. The Senior Education Advisor to the Governor;
7. The Education Advisor to the Governor;
8. The State Controller; and
9. The President of the Microelectronics Center of North Carolina.

Any member may designate a representative to participate in Advisory Council business in the event that such member is unable to participate in person.

The Advisory Council may call upon experts in the fields of education and telecommunications for information and advice.

Section 3. Chairman and Meetings. The Secretary of the Department of Administration shall serve as Chairman. The Advisory Council shall meet at least once per quarter at the call of the Chairman.

Section 4. Purposes. The Advisory Council shall perform the following duties:

- a. develop a long-range plan to be presented to the Governor for the use of technology in public schools, universities, community colleges, homes, and prisons across the State; and

- b. coordinate efforts for the efficient use of telecommunications in education.

Section 5. Administrative Support and Expenses.

Administrative support for the Advisory Council shall be provided by the Office of the Governor. No member shall be entitled to a per diem allowance. Reimbursement for actual expenses may be paid out of funds appropriated to the Office of the Governor.

Section 6. Semiannual Reports. The Advisory Council shall submit a semiannual report to the Governor on its findings and progress.

Section 7. Effective Date and Expiration. This Executive Order shall be effective immediately and shall expire two years from this date, unless amended or extended by further Executive Order of the Governor.

Done in Raleigh, North Carolina, this the 20th day of March, 1991.

James G. Martin
James G. Martin

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NO. 137
ESCROWING CONTRIBUTIONS TO THE
TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM

Shortfalls and possible shortfalls in the State's revenue collections for fiscal year 1990-91, require that the State conserve its cash resources whenever the same can be done without impairing either the services rendered by the State or the compensation paid to the State's employees who render the services.

Appropriated but unpaid contributions to the Teachers' and State Employees' Retirement System are authorized contributions by the State to the System but are not "funds" of the Teachers' and State Employees' Retirement System, as that word is used in Article V, Sec. 6(2) of the Constitution. Like other appropriations, appropriations to the Teachers' and State Employees' Retirement System are subject to the directive given the Governor by Article III, Sec. 5(3) of the Constitution, to avoid deficits by effecting economies in State expenditures.

Actuarial studies based on assumptions that I find acceptable show that the amounts of the State's past contributions to the Teachers'

and State Employees' Retirement System have been such that the State's contributions to the System for the months of January through June, 1991, can be foregone without impairing either the current or future retirement, disability or death benefits to which retirees are entitled under present law.

THEREFORE, to the end that the State's cash resources may be sufficient to meet the State's needs for cash for the balance of FY 1990-91 and pursuant to authority granted to me by Article III, Secs. 1 and 5(3) of the Constitution, N.C.G.S. §§143A-4 and §§143B-4 and the Executive Budget Act, it is ORDERED:

Section 1. The State's agencies shall not make contributions to the Teachers' and State Employees' Retirement System for the months of January through June 1991.

Section 2. The Office of State Budget and Management shall escrow in a special account within the Treasury, cash in an amount equal to 2.3% and 0.16% of the compensation paid by the State to members of the Teachers' and State Employees' Retirement System for the months of January through June, 1991. If and at such time prior to June 30, 1991, it is found necessary to use some or all of the cash so escrowed to keep the State from incurring a deficit as defined in Article III, Sec. 5(3) of the Constitution, so much of the escrowed cash as shall be needed therefor shall be transferred to the General Fund. All cash remaining in the Escrow Fund on June 30, 1991, if any, shall be paid to the Trustees of the Teachers' and State Employees' Retirement System before the close of that business day as the State's contribution to the Fund for the period January 1 through June 30, 1991.

Section 3. This Executive Order shall be effective immediately and remain in effect until rescinded or the beginning of the business day July 1, 1991, whichever is earlier.

Done in Raleigh, North Carolina this 22nd day of March, 1991.

James S. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NO. 138
AMENDING EXECUTIVE ORDER NO. 137

Section 1. Executive Order No. 137 is amended to read as follows:

"EXECUTIVE ORDER NO. 137
ESCROWING CONTRIBUTIONS TO THE
TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM

"Shortfalls and possible shortfalls in the State's revenue collections for fiscal year 1990-91, require that the State conserve its cash resources whenever the same can be done without impairing either the services rendered by the State or the compensation paid to the State's employees who render the services.

"Appropriated but unpaid contributions to the Teachers' and State Employees' Retirement System are authorized contributions by the State to the System but are not "funds" of the Teachers' and State Employees' Retirement System, as that word is used in Article V, Sec. 6(2) of the Constitution. Like other appropriations, appropriations to the Teachers' and State Employees' Retirement System are subject to the directive given the Governor by Article III, Sec. 5(3) of the Constitution, to avoid deficits by effecting economies in State expenditures.

"Actuarial studies based on assumptions that I find acceptable show that the amounts of the State's past contributions to the Teachers' and State Employees' Retirement System have been such that the State's contributions to the System for the months of January through June, 1991, may be reduced as hereinafter provided without impairing either the current or future retirement, disability or death benefits to which retirees are entitled under present law.

"THEREFORE, to the end that the State's cash resources may be sufficient to meet the State's needs for cash for the balance of FY 1990-91 and pursuant to authority granted to me by Article III, Secs. 1 and 5(3) of the Constitution, N.C.G.S. §§143A-4 and §§143B-4 and the Executive Budget Act, it is ORDERED:

"Section 1. If hereafter found by me to be necessary to enable the State to meet its needs for cash for the remainder of FY 1990-91 and thereby avoid a deficit as defined in Article III, Sec. 5(3) of the Constitution, the State's agencies' contributions to the Teachers' and State Employees' Retirement System for the months of January through June 1991, shall be reduced as provided in Section 2, hereof.

"Section 2. The Office of State Budget and Management shall escrow cash in an amount equal to 2.3% and 0.16% of the compensation paid by the State to members of the Teachers' and State Employees' Retirement System for the months of January through June, 1991. If and at such time prior to June 30, 1991, it is found by me to be necessary to use some or all of the

cash so escrowed to keep the State from incurring a deficit as defined in Article III, Sec. 5(3) of the Constitution, so much of the escrowed cash as shall be needed therefor shall be transferred to the General Fund. All cash remaining in the Escrow Fund on June 30, 1991, if any, shall be paid to the Trustees of the Teachers' and State Employees' Retirement System before the close of that business day as the State's contribution to the Fund for the period January 1 through June 30, 1991.

"Section 3. This Executive Order shall be effective immediately and remain in effect until rescinded or the beginning of the business day July 1, 1991, whichever is earlier.

Done in Raleigh, North Carolina this 22nd day of March, 1991."

Section 2. Executive Order No. 137, as amended, is republished and reaffirmed in its entirety.

Section 3. This Executive Order is effective immediately.

Done in Raleigh, North Carolina this 28th day of March, 1991.

James S. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 139
ESTABLISHING THE GOVERNOR'S VOLUNTEER
ADVISORY COUNCIL

WHEREAS, Congress has passed and the President has signed the National and Community Service Act of 1990; and

WHEREAS, the Act requires that the Governor or his designee submit one consolidated application for funding to the National Service Act Commission; and

WHEREAS, I find that an advisory council is necessary to assist me in the development of a consolidated, statewide plan for volunteer programs in North Carolina;

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina; IT IS ORDERED:

Section 1. Establishment. There is hereby established the Governor's Volunteer Advisory Council.

Section 2. Membership. Members of the Volunteer Advisory Council shall be appointed by the Governor. The Council shall consist of no fewer than 15 and no more than 18 members. In establishing the Volunteer Advisory Council, the Governor shall

appoint 8 members for a term of one year, and 7 to 10 members for a term of two years. Following expiration of the one-year term, all appointments shall be for two-year terms. Members may not serve more than two consecutive terms. Members shall be representatives from the public, private, and non-profit sectors and individuals with a special interest in the promotion of volunteerism.

Section 3. Officers. The Officers of the Volunteer Advisory Council shall be Chairman, Vice-Chairman, and Secretary. The Chairman shall be appointed by the Governor. The Vice-Chairman and Secretary shall be elected by the Council. All officers shall serve for a term of one year. In the event of a vacancy in the office of Chairman, the Governor shall appoint a replacement to finish the unexpired term. Vacancies in the offices of Vice-Chairman and Secretary shall be filled by election by the Council.

Chairman: It shall be the duty of the Chairman to preside at all meetings of the Advisory Council; to appoint all committee chairmen; to assist all chairmen in the planning of committee activities; to supervise all chairmen as to the management of committee plans; to call all special meetings with the approval of the Governor's Office of Citizen Affairs Executive Director; and to be an ex-officio member of all committees.

Vice-Chairman: The Vice-Chairman shall assist the Chairman, and in the absence of the Chairman shall perform the duties of the Chairman. The Vice-Chairman shall accept special assignments from

the Chairman and perform other duties as delegated by the Volunteer Advisory Council.

Secretary: The Secretary shall be responsible for the minutes of the meetings of the Advisory Council and the Executive Committee; shall keep an updated list of names, addresses and phone numbers of Volunteer Advisory Council members; and shall keep a record of attendance at meetings.

Section 4. Executive Committee. There shall be an Executive Committee consisting of the Officers of the Volunteer Advisory Council, the Executive Director of the Governor's Office of Citizen Affairs, and the Governor's Volunteer Program Coordinator. The Executive Committee shall have authority to act as the full Council in instances where it is impossible to assemble the entire Council.

Section 5. Meetings. The Advisory Council shall meet at least bi-monthly. Failure to attend at least 75 percent of called meetings in any calendar year shall result in removal from the Council. At least fourteen days prior to a full Volunteer Advisory Council meeting, notice in writing shall be given to each member by first class mail, postage prepaid and sent to the member's last known address as shown in the records of the Commission. A quorum shall consist of a simple majority of the current Volunteer Advisory Council membership. Roberts Rules of Order, revised, shall be the parliamentary authority for all matters of procedure.

Section 6. Purpose. The Governor's Volunteer Advisory Council shall advise, assist, and support the Governor and his

Office of Citizen Affairs in matters involving volunteerism and the planning and implementation of volunteer programs. This Council shall, in its advisory role, assist the Governor's National Service designee and the Governor's Office of Citizen Affairs in the development and coordination of a consolidated statewide plan for volunteer programming in North Carolina.

Section 7. Duties. The Council shall have the following duties:

- (1) Assist the Governor's designee with the planning and submission of a coordinated statewide plan for volunteer programs in each of the Title areas of the National and Community Service Act of 1990;
- (2) Make recommendations for innovative, creative programs to increase volunteer participation in all age groups;
- (3) Assist the Governor's Office of Citizen Affairs in the planning and implementation of volunteer programs;
- (4) Develop and establish a centralized, organized system of obtaining information and advice concerning volunteerism throughout North Carolina;
- (5) Assist the Governor's Office of Citizen Affairs in forming a partnership between government (state and federal), non-profit organizations, private volunteer organizations, and the business community to ensure support and further the advancement of North Carolina's volunteer community;
- (6) Assist in the planning of statewide recognition and recruitment of volunteers and promotion of volunteerism;

- (7) Serve as advocates for volunteerism in matters involving legislation on the state and federal levels;
- (8) Advise and assist in the development of future Governor's Office of Citizen Affairs goals and objectives concerning volunteerism in North Carolina;
- (9) Serve as representatives of the Governor at volunteer functions throughout the State.

Section 8. Administration and Expenses. The staff of the Governor's Office of Citizen Affairs shall serve as administrative support for the Advisory Council. A Governor's Office of Citizen Affairs staff member shall serve as Administrator to the Advisory Council. Permanent records of all Volunteer Advisory Council business shall be maintained in the Governor's Office of Citizen Affairs and shall be the responsibility of the Council Administrator.

No per diem allowances shall be paid to members of the Council. Members of the Council may be reimbursed for necessary travel and subsistence expenses as authorized by N.C.G.S. 138-5. Funds for reimbursement of such expenses shall be made available from funds authorized by the Governor's Office of Citizen Affairs.

This Order effective this the 28th day of March, 1991.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NO. 140
APPOINTING SPECIAL COMMISSION
TO INVESTIGATE SHORTAGES IN THE
NORTHAMPTON COUNTY SCHOOLS' FINANCES

The Northampton County Board of Commissioners has asked that I appoint a special commission to investigate shortages and the causes for the shortages in the Northampton County Schools' finances. Documents were submitted in support of the request which evidence that shortages totaling \$484,185 were suffered during the 1988-89 and 1989-90 school years and that there have been various violations of the North Carolina School Finance Act. The request was made by the Northampton County Board because it felt that the financial condition of the schools had deteriorated to the point that neither the Northampton Board of Education nor the Northampton County Board could cope with it.

North Carolina General Statute §143-158 authorizes the Governor to appoint special commissions to investigate State departments or institutions and submit their findings to him.

Article IX, Sec. 5 of the Constitution vests the State Board of Education with the authority and responsibility for supervising and administering the State's free public school system and the educational funds provided by the State for its support. Northampton

County Schools is a part of the free public school system and it and the funds provided for its support are subject to the supervision and administration of the State Board of Education.

The State Auditor has the authority and resources to do much of the work that will be required for the State Board of Education to make the investigation requested by the Northampton County Board. The State Board of Education has made known to me that it would be helpful to the State Board to have the benefit of the assistance of the State Auditor in carrying out the investigation.

THEREFORE, as requested by the Northampton County Board of Commissioners and pursuant to Article III, Sec. 1 and Article IX, Sec. 5 of the Constitution and North Carolina General Statutes §143-158, §143A-25 and §147-64.6(c)(3), it is ORDERED:

Section 1: The State Board of Education is hereby designated a Special Commission to investigate alleged shortages in the Northampton County School's finances and the causes for such shortages and report to me (i) the results of its findings and (ii) its recommendations for remedying whatever shortcomings found.

Section 2: The State Auditor is hereby requested to assist the State Board of Education in its investigation by conducting a Special Investigation and Compliance Audit of the Northampton County Schools for such periods as are found to be indicated for the State Board of Education to discharge its responsibilities hereunder and to do all such other things as appear to the State Auditor to be appropriate to that end and to report the results of the same to the State Board of Education.

Section 3: The Attorney General, the Department of Justice, the State Treasurer, the Local Government Commission and all other agencies of the State called upon to do by the State Board of Education and/or the State Auditor, shall furnish assistance to the State Board and/or the State Auditor in conducting this investigation.

Section 4: This Executive Order shall be effective immediately and shall remain in effect until terminated by me or my successor.

Done in Raleigh, North Carolina, this 22nd day of April, 1991.

James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten, Secretary of State



State of North Carolina



JAMES G. MARTIN

GOVERNOR

EXECUTIVE ORDER NUMBER 141
AMENDING EXECUTIVE ORDER NUMBER 90
GOVERNOR'S ADVISORY COUNCIL ON LITERACY

By the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Executive Order Number 90, as amended by Executive Order Number 104, is hereby amended to add the following member to the Council:

Section 2. Membership

12. One representative of the Department of Human Resources working in early child development to be appointed by the Governor

Executive Order Number 90 is hereby extended until May 18, 1993.

This Executive Order shall become effective immediately.

Done in Raleigh, this the 17th day of April, 1991.

James G. Martin

James G. Martin
Governor

ATTEST:

Rufus W. Edmisten

Rufus W. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 142 CHILD PROTECTIVE SERVICES

WHEREAS, the future of North Carolina depends on its children; and

WHEREAS, the number of abuse and neglect cases have skyrocketed in recent years, in too many instances cutting short the lives of our youngest citizens; and

WHEREAS, county departments of social services received 36,000 reports of child abuse and neglect in state fiscal year 1989 involving more than 52,000 children; and

WHEREAS, reports of abuse and neglect are increasing dramatically at a time when both the state and counties are facing serious revenue shortfalls, leaving them unable to provide the funds necessary for the number of social services workers needed to investigate abuse/neglect reports and provide treatment for children and their families; and

WHEREAS, it is the duty of the Department of Human Resources' Division of Social Services to assist counties in providing the services necessary to protect children from abusive home situations;

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. The Secretary of Human Resources is responsible for ensuring that the Division of Social Services strengthen its supervision of county administered Child Protective Services (CPS) programs through such mechanisms and methods as: the procedures for division review of child fatalities, the establishment of Community Child Protection Teams, more effective

monitoring of CPS screening decisions, improvements to the Central Registry for Child Abuse and Neglect, increased training and community awareness, enhancement of the Child Medical Evaluation Program and proposed legislative actions.

Section 2. The Secretary of Human Resources is hereby directed to request the Social Services Commission to enact emergency rules, in accordance with Chapter 150B of the North Carolina General Statutes, requiring each County Department of Social Services to establish a Community Child Protection Team to review defined cases of child abuse or neglect, including child fatalities. It is my recommendation that the membership of each team include, but not be limited to, the following individuals: the director of Social Services and a member of their staff, local law enforcement, the District Attorney's office, the medical profession, community action agency, school personnel, county social services board member and, at their option, three to five members appointed by the county board of commissioners. The county board of commissioners may by action within 30 days designate the chairman of the review team. Otherwise, the director of Social Services will chair the team.

In cases of abuse/neglect, the focus of the team shall be to ensure appropriate community involvement in the protection of the children and to assist the county department of social services in evaluating allegations of maltreatment and in planning and providing services to prevent further abuse/neglect. In the review of child fatalities resulting from maltreatment, the focus of the review team will be to identify gaps and deficiencies in the local child protection system and help put into place needed remedies, and to assist the county department of social services in the protection of surviving siblings.

The teams shall conduct their reviews in compliance with all laws and regulations governing confidentiality of abuse/neglect records.

Section 3. It shall be the responsibility of the Department of Human Resources Division of Social Services, in accordance with the laws and through the adoption of emergency rules by the Social Services Commission, to:

1. Develop procedures to guide the operation of community child protection teams and to define the cases which will be subject to review by the county teams.
2. Standardize among counties the interpretation of "caretaker" so all counties investigate allegations of abuse and neglect involving non-traditional family members, such as boyfriends.
3. Require each county department of social services to have a two level review prior to making a decision not to investigate a report of alleged abuse or neglect.

Such review would, at a minimum, involve the worker receiving the call and that person's supervisor and could include review by the county director.

4. Monitor closely county cases in which the decision was made not to investigate a report.
5. Require each county department to establish a process by which the reporting person may request and obtain a review of the decision not to investigate, and will require that such persons be informed of the process for obtaining such a review.
6. Require that all county Child Protective Services staff attend basic training courses developed by the Division of Social Services after consultation with the Office of State Personnel.
7. Make improvements to the Central Registry for Child Abuse and Neglect by amending 10 N.C.A.C. 41I.0102. These improvements will allow county departments of social services to identify whether children who are the subject of abuse/neglect investigations have been previously reported as abused or neglected, or whether the child is a member of a family in which a child fatality due to maltreatment has occurred in any county in the state. These improvements shall allow law enforcement and medical professionals to have all pertinent information from the State Central Registry which legally may be disclosed. Further, these improvements shall allow the Department of Human Resources and the division to provide access, as allowed by law, to the Central Registry by law enforcement and the Chief Medical Examiner's office in the event of a child fatality to determine whether abuse or neglect should be evaluated as a cause of death.
8. Provide quarterly reports to the public on child fatalities that occur due to maltreatment.

Section 4. Funds from the Community Services Block Grant administered by local Community Action Agencies shall be allocated for Community Awareness Conferences across the state. The Conferences will seek to increase citizen and agency participation in appropriate reporting of child abuse/neglect and fatalities, and in family preservation and child protection activities.


Section 5. The terms and conditions of this Executive Order which may conflict with the terms and conditions of previous Executive Orders on this subject shall control.

Section 6. This Order shall become effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the
1st day of May, 1991.


James G. Martin
Governor

ATTEST:


Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 143
NORTH CAROLINA ADVISORY COUNCIL ON VOCATIONAL
AND APPLIED TECHNOLOGY EDUCATION

WHEREAS, the Carl D. Perkins Vocational Education Act was enacted by Congress through Public Law 88-210 on December 18, 1963, and amended by Public Law 98-524 on October 19, 1984; and

WHEREAS, Public Law 101-392, the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, was enacted by Congress on September 25, 1990, for the purpose of enabling further improvements in the provision of services under such Act;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 1. Executive Order Number 3 Rescinded. Executive Order Number 3, dated March 27, 1985, is hereby rescinded. All records of the North Carolina Advisory Council on Vocational Education created pursuant to Executive Order Number 3 are transferred to the Council created herein. The Council established in Section 2 of this executive order shall be the

successor to the North Carolina Advisory Council on Vocational Education.

Section 2. Establishment. The North Carolina Advisory Council on Vocational and Applied Technology Education (hereinafter Council) is hereby established in accordance with the requirements of Section 112 of Public Law 98-524 as amended by Public Law 101-392.

Section 3. Membership. The Council shall consist of 13 members appointed by the Governor and who serve at his pleasure. The composition of the Council's membership shall be as prescribed by Sec. 112 of Public Law 98-524 as amended by Public Law 101-392.

Section 4. Duties and Responsibilities. The Council shall meet, select from among its membership a chairperson who shall be a representative of the private sector, and perform all duties and responsibilities required by Public Law 98-524 as amended by Public Law 101-392, Carl D. Perkins Vocational and Applied Technology Education Act (hereinafter Act).

Section 5. Administration. The State of North Carolina and all its constituent departments, agencies and institutions shall cooperate with the Council including providing appropriate office space and support services.

This Order is effective immediately.

Done this the 1st day of May, 1991.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 144
AMENDING AND EXTENDING EXECUTIVE ORDER NUMBER 53
THE GOVERNOR'S INTER-AGENCY ADVISORY TEAM ON
ALCOHOL AND OTHER DRUG ABUSE

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Executive Order Number 53, as amended by Executive Order Number 85, is hereby amended to add the following member to the Advisory Team.

Section 1. Establishment

The Advisory Team shall consist of not less than eleven members and shall include the following...

A representative from the Department of Environment,
Health and Natural Resources.

Executive Order Number 53 is hereby extended until March 1, 1993.

This Executive Order shall become effective immediately.

Done in Raleigh, this the 3rd day of May, 1991.

James G. Martin

James G. Martin
Governor

ATTEST:

Rufus L. Edmisten

Rufus L. Edmisten
Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 145
REALLOCATING THE COMMUNITY PENALTIES PROGRAM
FROM THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY
TO THE DEPARTMENT OF CORRECTION

Upon examination of the functions, powers, and duties of the Department of Crime Control and Public Safety related to the administration of the Community Penalties Program, it appears to be necessary for efficient administration and in the best interest of the State for the Community Penalties Program provided by Article 11, Part 6 of Chapter 143B of the North Carolina General Statutes to be reallocated from the Department of Crime Control and Public Safety to the Department of Correction;

THEREFORE, pursuant to authority vested in me as Governor by Article III, Section 5(10) of the Constitution and North Carolina General Statutes Sections 143A-8 and 143B-12, it is ORDERED:

The Community Penalties Program provided by Article 11, Part 6 of Chapter 143B of the North Carolina General Statutes, is hereby reallocated from the Department of Crime Control and Public Safety to the Department of Correction in the manner described for a Type I transfer in North Carolina General Statute 143A-6.

Done in Raleigh, this the 30th day of May, 1991.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State



State of North Carolina

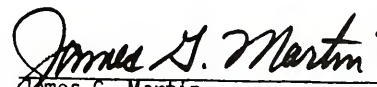


JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 146
SUPPLEMENTING EXECUTIVE ORDER NUMBER 145
REALLOCATING THE COMMUNITY PENALTIES PROGRAM
FROM THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY
TO THE DEPARTMENT OF CORRECTION

Executive Order No. 145 shall not be implemented until further
Executive Order signed by me.

Done in the Capital City of Raleigh, North Carolina, this 28th day
of June, 1991.


James G. Martin
Governor

ATTEST:


Rufus W. Edmisten, Secretary of State



NUMERICAL INDEX TO SENATE AND HOUSE BILLS

1991 GENERAL ASSEMBLY FIRST SESSION 1991

Ratified Number refers to the Session Law Chapter number except when preceeded by an R, in which case it refers to the Resolution number.

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17	676	126	279	225	400
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34	602	134	115	236	R9
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90	17	166	52	281	540
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312	389	415	217	530	483
316	457	417	189	534	632
319	422	419	168	537	244
320	458	422	265	538	218
321	423	424	575	539	708
324	719	425	722	544	118
325	143	426	683	545	204
326	185	427	362	549	324
329	643	429	723	550	325
330	152	433	724	551	82
333	720	434	703	553	108
336	480	438	745	555	245
338	721	447	202	557	169
339	644	449	576	564	519
341	343	450	623	565	685
342	681	451	725	569	119
343	459	457	78	575	92
344	186	458	542	578	120
347	77	460	104	580	665
350	757	465	566	581	424
356	187	469	322	585	577
357	188	470	704	590	438
358	691	472	726	592	170
359	481	473	543	594	283
360	631	475	295	599	407
362	73	476	190	611	171
368	319	477	117	612	391
372	359	479	323	615	121
373	573	483	306	619	122
376	482	485	727	620	364
377	281	486	253	622	392
380	541	488	363	623	246
384	682	491	254	624	267
385	360	492	105	628	233
386	403	493	106	629	393
389	320	498	404	631	123
392	744	501	390	632	93
395	747	502	90	634	365
396	460	505	684	635	366
397	574	506	728	639	255
398	645	507	98	642	604
399	282	508	649	645	234
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660	191	741	173	802	567
661	192	742	578	809	545
662	235	744	326	814	711
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669	605	746	206	817	607
670	730	758	735	822	220
678	748	760	710	828	688
679	205	762	484	829	83
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686	172	766	705	930	760
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689	606	771	544	935	693
690	344	773	236	943	712
694	732	774	485	949	R28
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5	270	119	48	264	33
6	755	121	R29	266	R7
8	193	122	345	267	74
9	79	124	579	273	55
10	46	126	741	274	756
11	221	131	346	275	370
13	30	132	634	276	347
14	694	133	522	278	464
16	1	134	580	279	427
18	650	135	488	281	673
20	624	138	15	282	272
22	546	148	307	283	525
23	487	157	67	286	R14
24	10	159	25	289	489
32	12	165	581	290	526
33	327	166	145	291	209
34	68	168	59	299	112
37	547	175	368	300	101
38	124	180	523	301	653
46	441	182	582	307	549
48	44	183	548	308	584
50	11	185	49	309	210
51	110	186	224	314	550
52	271	193	625	321	94
54	651	194	26	324	428
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63	9	204	462	330	527
64	672	206	60	331	113
68	39	208	54	332	608
75	222	211	208	333	328
76	4	215	27	339	61
78	62	218	225	340	155
80	666	219	226	343	64
82	223	220	463	344	156
83	689	224	63	347	490
84	47	225	177	348	146
85	5	228	20	350	88
86	652	233	583	352	410
88	6	240	524	353	125
89	740	241	369	355	348
95	57	243	194	356	285
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370	586	455	492	585	372
371	429	456	298	586	373
372	126	460	195	587	494
373	127	462	157	588	310
374	70	463	413	592	158
381	329	464	588	595	467
385	128	467	87	597	593
386	430	468	349	598	247
388	95	478	178	600	147
390	442	479	667	601	751
391	297	482	627	602	395
392	71	483	196	603	159
395	568	485	465	604	495
396	569	487	637	605	434
398	635	488	589	607	374
400	528	490	590	608	350
402	654	491	657	610	302
406	394	493	529	611	695
407	129	494	706	616	333
408	701	495	331	617	311
409	130	498	612	620	375
410	431	499	299	621	554
411	96	501	591	623	334
412	286	505	332	624	496
413	609	506	300	634	197
414	443	512	551	635	229
416	273	513	493	637	136
417	610	516	530	638	248
418	491	520	432	640	335
419	587	532	309	642	444
420	636	534	301	652	376
421	274	544	613	653	211
422	287	545	75	659	435
423	256	547	674	662	531
424	227	551	552	663	497
425	655	553	102	664	377
427	257	554	132	667	498
428	237	556	592	668	303
433	611	559	133	672	445
435	411	562	134	673	658
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441	131	564	668	676	97
442	288	569	84	678	198
445	228	570	135	680	137
448	412	574	553	681	396
449	275	577	466	682	446
450	626	582	179	684	659
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689	249	786	415	911	340
690	304	787	397	912	315
691	259	788	212	915	239
699	149	789	557	918	562
701	614	790	596	919	R13
702	500	794	533	923	436
703	594	795	140	924	629
708	414	796	558	925	507
711	378	797	384	926	165
712	138	798	141	928	278
713	351	800	468	929	761
714	199	801	504	932	85
717	139	802	559	933	618
719	501	806	231	939	387
720	379	807	260	942	474
722	380	808	163	944	563
724	381	809	597	951	166
726	555	811	251	953	564
727	305	816	252	956	640
728	595	819	385	959	416
730	382	821	639	964	341
734	758	824	560	965	508
735	250	825	617	966	417
737	383	826	469	967	291
738	615	837	505	976	262
739	638	838	534	985	698
740	616	848	164	987	509
743	R12	849	114	989	565
745	160	850	697	991	292
746	336	851	470	996	388
747	161	852	628	1002	510
748	759	854	238	1010	699
750	337	855	276	1013	619
752	338	861	290	1014	750
754	570	865	398	1016	511
756	556	868	261	1017	512
757	660	869	506	1018	513
760	502	873	471	1027	620
763	532	874	472	1037	630
764	503	881	670	1039	598
766	200	884	448	1044	535
770	669	890	661	1046	240
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